

**Massachusetts Workers' Compensation
Advisory Council Minutes**

March 9, 2005

Department of Industrial Accidents

600 Washington Street, 7th Floor

Boston, MA 02111

Present: Vice-Chairman Thomas M. Jones. CM: Edmund C. Corcoran, Jr.; Mickey Long; John A. Pulgini.

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; Marlene Najarian, Joint Committee on Labor & Workforce Development; Karen Gibbons, WCRIB.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: Chairman Paul Byrne; CM: Jeanne-Marie Boylan; Robert Banks; Antonio Frias; Bruce Cochrane; Carol Falcone; Kenneth J. Paradis, Jr.; Department of Labor and Workforce Development; Department of Business & Technology.

Agenda:

Chairman's Welcome

DIA Update

Judicial Update - James LaMothe, Senior Judge

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

Budgetary Matters - Jack Tynan, Deputy Commissioner of Administration

Action Items

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Budget Subcommittee Update

Executive Director Update

Miscellaneous

Chairman's Welcome

The meeting began informally at approximately 9:30 a.m. Council Members welcomed the new Senior Judge, James LaMothe. Following introductions, Council Members requested that the Senior Judge proceed with his judicial update.

DIA UPDATE

Judicial Update

Senior Judge LaMothe updated Council Members on the information contained within the DIA's vital statistic report (see attached). Conference Queue: 248; Hearing Queue: 1,703; Reviewing Board Inventory: 115; Impartial Exams: 3,076 (73 waivers). Senior Judge LaMothe emphasized the significance of recruiting Impartial Medical Physicians. He provided the Council with a brief history of the fee schedule and reviewed the advantages and disadvantages of making legislative adjustments. The Senior Judge stated that he would reach out to the medical community in an effort to recruit more physicians.

Senior Judge LaMothe reported that he is currently interviewing applicants for the management position in the Impartial Unit. He explained that the previous manager was both a registered nurse and an attorney. The Senior Judge emphasized the importance of placing someone in this position that would be able to understand both the medical and legal issues.

Senior Judge LaMothe expressed satisfaction with the figures in the conference and hearing queues. He explained that he anticipates the conference queue to increase slightly in the future. The Senior Judge briefly reviewed the case time frames for the dispute resolution system.

He explained that after a claim is filed it takes fourteen days to reach a conciliation. The Senior Judge noted that it takes approximately four to five weeks for a case to move from a conciliation to a conference. Senior Judge LaMothe reported that many attorneys have voiced concern about the shortness of this time period. He stated that many attorneys believe that there is not enough time to gather the necessary information (i.e. medical reports) to properly defend their clients. The Senior Judge stated that he would like to see this time period extended to six to eight weeks.

Senior Judge LaMothe reported that the Governor had appointed Katherine Koziol as an Administrative Judge to the Industrial Accident Board. He stated that Judge Koziol would begin her judicial service in mid-April and would be assigned to the Worcester regional office on a trial basis. The Senior Judge noted that there is still one vacant Administrative Law Judge position. He indicated that he would be working with the Governor's Office in an effort to fill this judicial vacancy.

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: 1,759; total SWOs issued: 10; total number of SWOs issued for FY'05: 111; total fines collected for February 2005: \$14,728; total fines collected in FY'05: \$153,382; 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 reported that the DIA would be revising their Stop Work Order Report to reflect the changes made to the investigative process. He stated that future reports would focus on the number of businesses that the DIA was able to bring into compliance with the law rather than the number of Stop Work Orders issued.

Mr. Taupier continued his update of the monthly vital statistics. Total number of cases filed for February 2005: 1,557; total number of cases filed for FY'05: 10,657; total number of cases filed for fiscal year 2004: 16,394; total number of First Report's filed for February 2005: 3,558; total number of First Report's filed for FY'05: 21,277.

In February of 2005, a total of 743 First Reports were filed on-line using the DIA's Information Portal on the Internet (20.9% of FRI filings). Forms 103, 104, 106 and 107 also became available on-line in February accounting for an additional 109 on-line filings. For FY'05, the number of on-line filings to date is 3,892. The number of cases filed in FY'05 continues to track below FY'04 levels. At the current rate, the year-end figure will be approximately 16,000 cases filed (seasonal adjustments have not been factored).

Mr. Taupier proceeded with his update on uninsured claims (§65). Estimated §65 claims filed for FY'05: 137 (with 120 actual uninsured injuries); uninsured claims paid by the Trust Fund for fiscal year 2005: \$3,420,805; 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.

Mr. Taupier offered the vital statistics for the Second Injury Fund. Number of §37/37A petitions filed in fiscal year 2005: 193; number of §37/37A petitions paid in fiscal year 2005: 410; the amount paid on these claims in fiscal year 2005: \$17,748,481; 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): \$1,156,838; COLA reimbursements to insurers in FY'04: \$19,806,728.

Deputy Commissioner Jack Tynan stated that approximately two-thirds of the Second Injury cases received by the Trust Fund are "mid-Act" cases. Mr. Tynan explained to Council Members that these cases have proven costly to the Trust Fund.

Council Members suggested that the DIA might want to consider the possibility of making legislative changes to the statute. The Advisory Council staff is currently researching how other states are addressing their Second Injury Funds.

Deputy Commissioner Tynan explained that although payments for COLA reimbursements are about to accelerate, there are indications that the final amount may be lower than originally projected. He stated that this was due primarily to the additional requirements now placed on insurers.

Budget/Personnel Issues

Deputy Commissioner Tynan stated that the personnel statistics for March were slightly lower than February. As of March 2005, the total number of positions filled by full-time employees at the DIA (including the WCTF) was 278 (246 DIA employees, 32 WCTF employees). The DIA has no contract employees at this time. Seven temporary employees are

being utilized within the DIA as of this report. Currently, the DIA has three investigators in the Trust Fund and eight investigators located in the Office of Investigations (with a Chief Investigator and the Director of Investigations).

ACTION ITEMS

Vice-Chairman Jones asked for a motion to accept the Minutes for February 13, 2005.

Motion made to accept the Minutes for February 13, 2005.

MMS - passed.

BUDGET SUBCOMMITTEE UPDATE

Vice-Chairman Tom Jones updated the Advisory Council in regards to a budget subcommittee meeting that took place on March 7, 2005. Mr. Jones stated that the Governor's FY'06 House 1 Budget had appropriated the DIA \$19,788,445. He explained that this budget represented a 2.3% increase from last year's final appropriation. The Vice-Chairman stated that the Governor's Budget required the DIA to reserve \$800,000 for occupational safety training grants.

Executive Director, Andrew Burton, reviewed the subcommittee's concerns and recommendations (see attached). The Executive Director stated that upon approval of the Advisory Council, he would forward a budget endorsement letter to the House Ways & Means Committee.

Vice-Chairman Jones asked for a motion to accept the Budget Subcommittee's recommendation to support the DIA's line-item of \$19,788,445 as contained within the Governor's FY'06 House 1 Budget Recommendation, with the following concerns: safety grant funding, Division of Occupational Safety funding, and Department of Labor funding. Motion made to accept the recommendations of the Budget Subcommittee.

MMS - passed.

The Executive Director stated that he would immediately draft a letter to the House Ways & Means Committee communicating the Council's budget endorsement and concerns.

EXECUTIVE DIRECTOR UPDATE

Executive Director, Andrew Burton, reported that the Workers' Compensation Rating & Inspection Bureau of Massachusetts had issued a rate filing requesting a 1.0% increase in average rates. The Executive Director stated that the Commissioner of Insurance had scheduled a Rate Filing Hearing for March 30, 2005. Mr. Burton noted that he would be testifying at this hearing on behalf of the Council.

Mr. Burton stated that the actuarial firm KPMG is currently working on the analysis of the rate filing and will be presenting the Council Members with a draft report at the April 13, 2005 Advisory Council meeting.

The Executive Director announced that the Uninsured Employer Task Force would be meeting on April 4, 2005 at 10:00 a.m.

Mr. Burton reported that the bills for the 2005-2006 Legislative Session have not been printed or posted on the Internet.

Funeral & Burial Allowances

The Executive Director addressed the subject of funeral and burial allowances. Mr. Burton stated that the 1991 Reform Act raised the maximum burial allowance from \$2,000 to \$4,000. He stated that during the last legislative session, four bills had been filed that attempted to raise the burial allowance.

Mr. Burton reported that the National Funeral Directors Association had calculated the average burial cost in Massachusetts to be \$6,177 in 2001. The Executive Director noted that three states use an index (i.e. State Average Weekly Wage) to calculate their funeral and burial expenses. Mr. Burton stated that he would inform Council Members of any legislative initiatives regarding burial allowances.

MISCELLANEOUS

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

Vice-Chairman Jones adjourned the meeting at approximately 11:30 a.m.

The next regular meeting of the Advisory Council is scheduled for April 13, 2005 at 9:00 AM, at the Division of Industrial Accidents, at 600 Washington Street, 7th Floor, Boston, MA 02111.