

**Massachusetts Workers' Compensation
Advisory Council Minutes**

April 13, 2005

Department of Industrial Accidents

600 Washington Street, 7th Floor

Boston, MA 02111

Present: Chairman Paul Byrne; Vice-Chairman Thomas M. Jones. CM: Edmund C. Corcoran, Jr.; Mickey Long; Tony Frias (Ines Leonardo); Jeanne-Marie Boylan; John A. Pulgini; Carol Falcone; Peter Scantalides, Department of Business & Technology.

Also Present: DIA: John Chapman, Commissioner; James LaMothe, Senior Judge; Jack Tynan, Deputy Commissioner of Administration; William Taupier, Deputy Director of Administration and EDP; Matthew Chamberlain, WCRIB; Richard A. Hofmann, KPMG.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: Robert Banks; Bruce Cochrane; Department of Labor & Workforce Development.

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

- Minutes - March 9, 2005

Actuarial Review of Rate Filing - Richard A. Hofmann, KPMG

Executive Director Update

Miscellaneous

Chairman's Welcome

Chairman Paul Byrne began the meeting at 9:00 a.m. He requested that Senior Judge James LaMothe 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: 529; Hearing Queue: 1,508; Reviewing Board Inventory: 150; Impartial Exams: 3,464 (78 waivers).

Senior Judge LaMothe reported that he has been evaluating the units within Dispute Resolution since coming into his new position. He explained that he would like to develop a system whereby he would be able to measure the time it takes a claim to move through the system. The Senior Judge believes this would help him target any weaknesses in the system.

Senior Judge LaMothe explained that his primary goal is to recruit more Impartial Medical Physicians while increasing the quality of the roster. In April of 2005, the number of physicians on the roster increased by six (272).

The Senior Judge commented that he continues to interview applicants for the management position in the Impartial Medical Unit. He explained that the previous manager was both a registered nurse and an attorney. The Senior Judge underscored the significance of placing someone in this position that would be able to understand both the medical and legal issues surrounding workers' compensation. The Senior Judge requested that the Advisory Council Members forward the job posting to any person who may be qualified and interested in the position. Senior Judge LaMothe expressed satisfaction with this month's vital statistics for the conference and hearing queues. He noted that he would like to cut down on the amount of traveling time for the judges by reexamining the regional schedule. Senior Judge LaMothe indicated that this change would allow cases to move more smoothly through the system, eliminating unnecessary delays.

Senior Judge LaMothe reported that Katherine Koziol began her position as an Administrative Judge last week. He stated that he has arranged for her to train with some of the more experienced judges in the Boston office. Senior Judge LaMothe explained that Judge Koziol would be assigned to the Worcester regional office upon the completion of her training.

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: 1,862; total SWOs issued: 18; total number of SWOs issued for FY'05: 129; total fines collected for March 2005: \$57,697; total fines collected in FY'05: \$212,079; total SWO fines collected in FY'04: \$343,528. Mr. Taupier reported that the Office of Investigations has experienced full compliance with all SWOs issued and with the collection of all fines. Mr. Taupier noted that the large fine collection amount for March is due to the interception of \$26,000 owed to DIA through the BARS accounting system.

Mr. Taupier announced that the DIA has begun their public awareness campaign aimed at educating employers in the Commonwealth about the mandatory requirement to provide workers' compensation insurance. Mr. Taupier noted that the agency is relying on radio and transit advertisements to get this important message out.

Mr. Taupier continued his update of the monthly vital statistics. Total number of cases filed for March 2005: 1,884; total number of cases filed for FY'05: 12,541; total number of cases filed for fiscal year 2004: 16,394; total number of First Report's filed for March 2005: 3,016; total number of First Report's filed for FY'05: 24,293.

In March of 2005, a total of 743 First Reports were filed on-line using the DIA's Information Portal on the Internet (21.68% of FRI filings). Forms 103, 104, 106, 107, 108, 110, 115 and 116 are now available on-line and accounted for an additional 156 online filings. For fiscal year 2005, the number of on-line filings to date is 4,048. 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 16,721 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: 164 (with 142 actual uninsured injuries); uninsured claims paid by the Trust Fund for fiscal year 2005: \$3,576,839; 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. The Civil Litigation Unit utilizes the courts and the authority of M.G.L. c. 152 to recoup money paid on uninsured claims by taking legal action against the employer in question. Mr. Taupier offered the vital statistics for the Second Injury Fund. Number of §37/37A petitions filed in fiscal year 2005: 236; number of §37/37A petitions paid in fiscal year 2005: 433; amount paid on these claims in fiscal year 2005: \$19,130,514; 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): \$1,751,733; COLA reimbursements to insurers in FY'04: \$19,806,728.

Mr. Taupier stated that the majority of Second Injury cases received by the Trust Fund are "Mid-Act" cases. He explained that these cases have proven to be costly to the Trust Fund. Mr. Taupier stated that the agency expects to see a significant increase in COLA reimbursements fairly shortly.

Deputy Commissioner Tynan reported that although there will be a significant increase in COLA reimbursements, the amount will be approximately \$3.0M below the budgeted amount. He attributes this decrease to the stringent requirements placed on the reimbursement qualifications.

Budget/Personnel Issues

Deputy Commissioner Tynan stated that the personnel statistics for April were slightly higher than March. As of April 2005, the number of employees whose salary is paid by either the DIA General Account or the WCTF Account was 283 (250 DIA employees, 33 WCTF employees). The DIA has no contract employees at this time. Five temporary employees are being utilized within the DIA as of this report.

ACTUARIAL REVIEW OF RATE FILING - KPMG

Mr. Richard Hofmann reviewed with the Advisory Council the initial findings of KPMG's analysis of the Workers' Compensation Insurance Rate Filing as submitted by the Workers' Compensation Rating & Inspection Bureau (WCRB).

Mr. Hofman reviewed in detail, KPMG's findings and conclusions (see attached).

Mr. Andrew Burton requested that all Council Members contact him within the next few days with any questions or comments they may have. He indicated that upon completion of KPMG's final report, it would be necessary for members to vote on the reports acceptance.

ACTION ITEMS

Chairman Byrne asked for a motion to accept the Minutes for March 9, 2005.

Motion made to accept the Minutes for March 9, 2005.

MMS - passed.

EXECUTIVE DIRECTOR UPDATE

Mr. Andrew Burton provided the Executive Director Update. He stated that on April 4, 2005, members of the Advisory Council teamed up with the DIA and formed an Uninsured Employer Task Force to discuss ways to improve employer compliance to the insurance mandate.

Mr. Burton explained that the Task Force members had agreed that the first priority should be to reinforce the civil penalties with legislation that would suspend or prohibit the issuance or renewal of a driver's license of an employer who is operating without workers' compensation insurance. The Executive Director stated that he would be drafting a letter to Representative Rodrigues requesting that such language be filed in a bipartisan fashion.

Mr. Burton reported that the Task Force also agreed that the criminal penalties should be strengthened to reflect restitution to the Trust Fund, rather than an arbitrary figure, such as the current maximum of \$1,500. The Executive Director noted that he would be working with Deputy Commissioner Greg White and his attorneys in an attempt to draft specific legislation.

Mr. Burton explained that the Task Force discussed additional funding sources for the DIA's insurance fraud campaign. The Executive Director noted that DIA has a limited budget of \$100,000. He stated that the Task Force members wanted to see financial contributions from both labor and the insurance industry to supplement this campaign.

Task Force members agreed to bring this issue to the attention of both labor and the insurance industry.

Mr. Burton stated that the Task Force discussed the possibility of enhancing the DIA's website with an on-line insurance look-up tool. The Executive Director stated that Task Force members were unsure if the insurance industry would show resistance to such a tool. Mr. Burton explained that Vice-Chairman Tom Jones offered to discuss this matter at the WCRB's next Governing Committee meeting.

Mr. Burton explained that the Task Force also discussed the possibility of publishing the names of companies that have multiple claims against the Trust Fund. The Executive Director stated that the Task Force would seek a legal opinion on this issue.

Mr. Burton stated that the Task Force discussed the idea of drafting a "White Paper" (i.e. fact sheet) to supply the courts regarding §25C. The Executive Director explained that DIA attorneys have expressed frustration that many judges do not fully comprehend the importance of employers purchasing workers' compensation insurance. Mr. Burton stated that a fact sheet could help educate judges about the economic disadvantages faced by competing employers, the predicaments faced by injured workers, and the burden that is placed on the Workers' Compensation Trust Fund.

Senior Judge LaMothe suggested that rather than providing judges with a fact sheet, the Task Force might want to contact the Flaschner Judicial Institute to have this issue brought up at judicial training sessions. Senior Judge LaMothe offered to provide contact names and numbers to Mr. Burton.

Mr. Burton stated that the agenda topic for the May Advisory Council meeting would focus on workers' compensation legislation. The Executive Director suggested to members that they should notify him of any specific bills they would like discussed.

MISCELLANEOUS

There were no other matters to be discussed at this time. Chairman Byrne adjourned the meeting at approximately 11:30 a.m.

The next regular meeting of the Advisory Council is scheduled for May 11, 2005 at 9:00 AM, at the Division of Industrial Accidents, at 600 Washington Street, 7th Floor, Boston, MA 02111.