

**Massachusetts Workers' Compensation  
Advisory Council Minutes**

May 10, 2006

Division of Industrial Accidents

600 Washington Street

Boston, MA 02111

**Present:** Vice-Chairman Thomas M. Jones. CM: Tony Frias (Ines Leonardo); Robert Banks (William Corley); John D. Boyle; Edmund C. Corcoran; Jill Brown; John Ziemba (Gayl Mileszko).

**Also Present:** DIA: Henry Swiniarski, Commissioner; James LaMothe, Senior Judge; Jack Tynan, Deputy Commissioner of Administration; William Taupier, Deputy Director of Administration and EDP; John A. Myers, AIM Mutual Insurance Company; Terry McCue, Boyle, Morrisey & Campo, P.C.

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

**Absent:** Chairman Paul Byrne; CM: Jeanne-Marie Boylan; Mickey Long; Robert Fitzsimmons; John Pulgini; Ken Paradis; Bruce Cochrane; 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

Action Items

- Minutes - April 12, 2006

Safety Grant Subcommittee Update

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.

## **DIA UPDATE**

### Judicial Update

Senior Judge LaMothe updated Council Members on the information contained within the DIA's vital statistic report for May of 2006 (see attached). Conference Queue: 894; Hearing Queue: 1,617; Reviewing Board Inventory: 128; Impartial Exams for FY'06 (to date): 4,590 (80 waivers). In fiscal year 2005 there were 4,779 Impartial Medical Examinations (119 waivers).

Senior Judge LaMothe stated that the reason the hearing and conference queue appear high in May due to a scheduled week of judicial training in June in which Judges will not hear cases. The Senior Judge stated that once the Judges' return to their regular schedule, he would expect these numbers to decrease and level off. Ideally, the Senior Judge noted that he would like to see the hearing queue at approximately 1,500 cases and the conference queue between 500-600 cases. Senior Judge LaMothe reported that the Impartial Unit has made progress in recruiting new doctors for the Impartial Medical Roster. The Senior Judge explained that he would provide a summary of these accomplishments at the next meeting.

In regards to judicial appointments, the Senior Judge stated that he would notify the Council's Executive Director if any names were forwarded to the Governor's Council for review. The Senior Judge also reminded Council Members that they could expect to interview judicial candidates this summer as several terms are due to expire. Senior Judge LaMothe explained that he has attempted to build a more comprehensive report to measure the number of judges with cases outstanding. The Senior Judge stated that he anticipates having a modified report for the Council in the near future.

### Stop Work Orders/Caseload Statistics

Mr. Taupier updated Council Members on the Stop Work Order (SWO) and Caseload Statistics for April of 2006 (see attached). SWO compliance and fine collection remains at 100%. Total compliance investigations completed during April: 1,938; total SWOs issued in April: 16; total SWOs issued for FY'06 (to date): 170; total number of SWOs issued for FY'05: 173; total fines collected for April: \$12,148; total fines collected in FY'06 (to date): \$187,519; total fines collected in FY'05: \$267,061.

Mr. Taupier continued his update of the monthly vital statistics. Total number of cases filed for April: 1,204; total number of cases filed for FY'06 (to date): 12,936; total number of cases filed for FY'05: 16,276; total number of First Reports filed for April: 2,545; total number of First Reports filed for FY'06 (to

date): 31,276; total number of First Reports filed for FY'05: 37,461. For FY'06, a total of 7,731 First Reports were filed online using the DIA's Information Portal on the Internet (25% of FRI filings).

Mr. Taupier recognized Council Member John Boyle and Terry McCue who had written an article titled, "The Department of Industrial Accidents - Using Technology to Make the Workers' Compensation System More Efficient." Mr. Taupier stated that the article explains how technology plays a key role in providing timely services to injured workers.

Mr. Taupier noted that the article would be published in next week's Standard and a future issue of Lawyers' Weekly. Council Member John Pulgini praised the DIA for their implementation of the interactive Section 15 Petition. Senior Judge LaMothe informed the Council that Judge Bernard Fabricant designed the form, which automatically calculates Section 15 benefits.

The Council raised concern over a select group of attorneys who are gaining access to the First Report of Injury List to solicit clients. The Senior Judge stated that he has received numerous complaints from attorneys whose clients are receiving these solicitation letters.

He noted that he has advised these people to contact the Board of Bar Overseers. Mr. Taupier reviewed the history behind the DIA's involvement in a lawsuit regarding the Freedom of Information Act. Presently the DIA is under a court order to provide information contained on Form 101 to requesting attorneys. The case is now before the Massachusetts Appeals Court. Mr. Taupier explained that House Bill 4563 is currently pending before the legislature to rectify this matter. He noted that this bill would prohibit the DIA from sending out the First Report of Injury List to members of the public. House Bill 4563 is before the Joint Committee on State Administration and Oversight Regulation. Council Member John Boyle recommended that the Advisory Council create a subcommittee to work with the Senior Judge on addressing this unethical practice of using DIA reports to solicit clients. CM Boyle also suggested that subcommittee could discuss strategies on passing House Bill 4563 into law.

**It was agreed that the Executive Director would e-mail the Council Members with an attachment of House Bill 4563 and would work with the Senior Judge on organizing a subcommittee meeting.**

Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims filed for FY'06 to date: 205; total amount of §65 claims paid by the Trust Fund for fiscal year 2006 (to date): \$5,080,482; total number of §65 claims filed for FY'05: 247 (with 201 actual uninsured injuries); total amount of §65 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 (§37/37A). Number of §37/37A petitions paid in fiscal year 2006 (to date): 432; amount paid on these claims in fiscal year 2006 as of March 31, 2006: \$12,780,376; 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): \$15,576,574; COLA reimbursements to insurers in FY'05: \$16.1 million.

### Budget/Personnel Issues

Mr. Taupier reported that as of April 2006, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 267 (233 DIA employees, 34 WCTF employees). The DIA has no contract employees at this time. Nine (9) temporary employees are being utilized within the DIA as of this report. The Office of Legal Counsel is utilizing the services of 3 legal interns. Each intern works on a part-time basis (the total hours each week add up to one position). Vice-Chairman Jones recognized Commissioner Henry Swiniarski. Commissioner

Swiniarski provided the Council with a brief update on the status of the State Auditor's Report. He noted that the State Auditor's Office is in the process of finalizing the audit report. He informed the Council that once he receives the final report he would share it with the Chairman and Vice-Chairman. The Commissioner stated that although the audit identifies significant findings, he is pleased that during the last two years major progress has been made on these concerns with the cooperation of the Advisory Council. The Commissioner noted that one finding references the Advisory Council.

### **ACTION ITEMS**

Vice-Chairman Jones asked for a motion to accept the Minutes for April 12, 2006.

Motion made to accept the Minutes for April 12, 2006.

MMS - Passed.

### **SAFETY GRANT SUBCOMMITTEE UPDATE**

Vice-Chairman Jones introduced Executive Director Andrew Burton who provided the members with an update on the April 12, 2006 Safety Grant Subcommittee Meeting. The Executive Director explained that the subcommittee identified several areas where modifications could be made to improve the grant program. Mr. Burton reviewed the notes from Safety Grant Subcommittee Meeting (see attached).

Commissioner Henry Swiniarski explained to Council Members that he had recently held a follow-up meeting to review the subcommittee's recommendations. As a result, the Commissioner explained that he has incorporated seven recommendations identified by the Safety Grant subcommittee members into a pilot program (see attached). The Commissioner noted that the pilot program would use the remaining FY'07 funds (approximately \$300,000) to seek grant proposals that address high-risk populations in

Massachusetts. Commissioner Swiniarski stated that he would like to provide a revised application to the public before June 30th.

Council Member John Boyle suggested that the DIA translate the Safety Grant applications into other languages to promote a diverse application pool. CM Boyle stated that brochures and pamphlets could also be translated and placed onto the DIA website.

Executive Director Burton stated that the subcommittee had discussed the creation of an electronic safety library where the public could download safety-training documents. The Executive Director also noted that the DIA could contact other states and collaborate with them on sharing safety documents. CM Jill Brown suggested that once the brochures and pamphlets are translated, they should be placed in health care centers for distribution.

**ACTION ITEM:**

Vice-Chairman Jones asked for a motion to support the Commissioner's proposal of a Safety Grant Pilot Program that addresses high-risk industries in Massachusetts.

Motion made to support the Commissioner's Safety Grant Pilot Program.

MMS - Passed.

**EXECUTIVE DIRECTOR UPDATE**

Executive Director Andrew Burton informed Council Members that the House Ways & Means FY'07 line-item for the DIA (\$20,406,316) was passed by the full House. Mr. Burton noted that the DIA's line-item was equal to the same amount endorsed by the Advisory Council in March. The budget now moves to the Senate Ways & Means Committee. The Executive Director explained that he would continue to notify the appropriate parties of the Advisory Council's budget recommendations.

Executive Director Burton stated that on April 28, 2006, he attended a Workers' Memorial Day event at the State House. He noted that this was a day to honor and remember those workers who were killed on the job during 2005. The Executive Director stated that the event was cosponsored by the Massachusetts AFL-CIO and MassCOSH and coincided with the release of a report, titled, "Dying for Work in Massachusetts: The Loss of Life and Limb in Massachusetts." Mr. Burton reviewed several of the report's findings and recommended that Council Members read the report.

Executive Director Burton reported that the Workers' Compensation Research Institute had recently released a new study, titled, "How Does the Massachusetts Medical Fee Schedule Compare to Prices Actually Paid in Workers' Compensation?" Mr. Burton explained that the study reviewed the actual prices

paid for medical services during 2003- 2004 compared to the Fee Schedule levels. The Executive Director reviewed several of the study's findings with Council Members. Mr. Burton stated that at next month's meeting, the study's author would give a brief presentation of the major findings. Mr. Burton requested that all Council Members review the study before next month's meeting.

### **MISCELLANEOUS**

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

Motion made to adjourn.

MMS - passed. Meeting adjourned 10:45 a.m.

**The next regular meeting of the Advisory Council is scheduled for Wednesday, June 14, 2006 at 9:00 AM, at the Division of Industrial Accidents, 7th Floor Conference Room, Boston, MA 02111.**