

**Massachusetts Workers' Compensation  
Advisory Council Minutes**

May 11, 2005

Department of Industrial Accidents  
600 Washington Street, 7<sup>th</sup> Floor  
Boston, MA 02111

**Present:** Vice-Chairman Thomas M. Jones. CM: Mickey Long; Tony Frias (Ines Leonardo); Jeanne-Marie Boylan; John A. Pulgini; John D. Boyle; Carol Falcone; Ken Paradis; Peter Scantalides, Department of Business & Technology.

**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; Karen Gibbons, WCRIB; Marlene Najarian, Joint Committee on Labor and Workforce Development; Attorney Alan S. Pierce, MATA.

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

**Absent:** Chairman Paul Byrne; CM: Robert Banks; Ed Corcoran; Bruce Cochrane; Department of Labor & Workforce Development.

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**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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Workers' Compensation Legislation Discussion

## **Chairman's Welcome**

Vice-Chairman Tom Jones began the meeting at 9:00 a.m. by introducing the new Advisory Council Member, Attorney John D. Boyle. Attorney Boyle will be the Advisory Council's small business representative. Attorney Boyle gave the Council a brief description of his background. Upon completion, Vice-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 (see attached). Conference Queue: 734; Hearing Queue: 1,645; Reviewing Board Inventory: 130; Impartial Exams: 4,108 (93 waivers).

Senior Judge LaMothe reported that he has received complaints about the limited amount of time parties have to prepare for cases moving from conciliation to conference. The Senior Judge noted that average time it takes for a case to move from conciliation to conference has recently increased to approximately eight weeks. The Senior Judge explained that he has instituted changes that will adjust the time frames and improve the system over time.

Senior Judge LaMothe reported that he still remains in his Administrative Judge term. He stated that it was necessary for him to remain in this position until he completes pending cases to eliminate the problem of having cases retried before a different judge.

Senior Judge LaMothe informed the Council that Judge Koziol is the first judge who will be subject to the new law requiring him to review judicial performance after the first two year's of service. He noted that this new law would affect all future appointments that have never served on the Industrial Accident Board.

The Senior Judge informed Council Members that two Administrative Judge terms would expire during 2005: Judge Omar Hernandez (12/29/05) and Judge Douglas Bean (6/26/05). The Senior Judge believes that the Governor will begin the reappointment process for both judges at the same time.

The Senior Judge reported that he has finished interviewing candidates for the management position in the Impartial Unit. The Senior Judge expressed concern regarding the quantity of qualified physicians currently on the impartial roster, especially in the western and outer areas of the state. The Senior Judge told the Council that he believes that if more doctors become available in these areas, it would ultimately reduce the timeframe between conference and hearing.

Senior Judge LaMothe informed the Council Members that he would provide the names of the judges who have cases overdue by more than six months for next month's meeting.

### 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: 1,887; total SWOs issued: 25; total number of SWOs issued for FY'05: 154; total fines collected for April 2005: \$27,282; total fines collected in FY'05: \$239,859; 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 continued his update of the monthly vital statistics. Total number of cases filed for April 2005: 1,300; total number of cases filed for FY'05: 13,223; total number of cases filed for fiscal year 2004: 16,394; total number of First Report's filed for April 2005: 2,879; total number of First Report's filed for FY'05: 230,997. In April of 2005, a total of 704 First Reports were filed on-line using the DIA's

Information Portal on the Internet (24.45% of FRI filings). By comparison, at this point last year, less than 5% of FRIs were submitted on-line. For fiscal year 2005, the number of on-line filings to date is 4,752. 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 15,868 cases filed (seasonal adjustments have not been factored).

Mr. Taupier stated that insurance companies would eventually be able to file multiple claims in batches at any time. He noted that this process would make the DIA much less paper dependent once the transition takes place. In the meantime, the DIA is developing a universal form to be used by all insurance companies.

CM Paradis suggested that the DIA target their public awareness campaign on small businesses since the majority of stop work orders issued appear to be businesses with ten employees or less.

Mr. Taupier proceeded with his update on uninsured claims (§65). Estimated §65 claims filed for FY'05: 188 (with 165 actual uninsured injuries); uninsured claims paid by the Trust Fund for fiscal year 2005: \$4,023,168; 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 proceeded with the vital statistics for the Second Injury Fund. Number of §37/37A petitions filed in fiscal year 2005: 258; number of §37/37A petitions paid in fiscal year 2005: 475; amount paid on these claims in fiscal year 2005: \$21,347,379; 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): \$2,864,332; COLA reimbursements to insurers in FY'04: \$19,806,728.

Deputy Commissioner Tynan reported that there would eventually be a significant increase in COLA reimbursements. He explained that the reason was due to the stringent requirements placed on the reimbursement qualifications, which have caused delays. Deputy Commissioner Tynan informed the Council that the DIA would most likely budget additional money next year to make up for this shortfall.

#### 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 Special Fund or the Trust Fund was 273 (240 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. Currently, the DIA has 267 FTEs.

### **ASSESSMENT AUDIT QUARTERLY UPDATE**

Mr. James Boyle, Audit Assessment Manager, presented the insurance assessment quarterly update to the Council Members. Mr. Boyle explained that the audit period runs from 1997 through 1998. Mr. Boyle reported that the DIA has received \$1,191,372 since February 16, 2005. The total amount remitted by the insurance companies (to date) is \$5,336,665.75. Currently, the DIA has spent \$1.9M to recover \$5.3M.

Mr. Boyle informed Council Members that when he began working at the DIA, there were 18 outstanding Demand Letters and 16 audits in various stages of completion.

Currently, there are only 3 outstanding Demand Letters and 2 audit reports that are yet to be finalized.

Mr. Boyle reported that he is working closely with the Division of Insurance (DOI) to ensure that each licensed carrier is properly paying their assessments. He stated that he would eventually like to be able to reconcile DIA databases with DOI databases to accurately measure premium volume for each insurance company.

CM Paradis suggested that the DIA consider developing a system which would assign a unique identification number to each insurance carrier, allowing the DIA to effectively track the amounts owed. He reported that the State of New York has an effective system whereby they are able to generate detailed information.

### **ACTION ITEMS**

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

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

MMS - passed.

Vice-Chairman Jones requested that all Advisory Council Members review the draft report from KPMG, which was included in their packets. KPMG has provided an analysis of the Workers' Compensation Insurance Rate Filing as submitted by the Workers' Compensation Rating & Inspection Bureau (WCRIB). Vice-Chairman Jones asked all members to call Mr. Burton with any questions or concerns they may have. He explained that a telephone poll would be conducted next Wednesday, May 18, 2005, on the acceptance of the report.

### **WORKERS' COMPENSATION LEGISLATION DISCUSSION**

Vice-Chairman Jones began the discussion on workers' compensation legislation. He informed the members that each package contained a summary of the proposed bills for the 2005-2006 Legislative Session. He noted that a hearing has been scheduled before the Joint Committee on Labor and Workforce Development for Wednesday, June 29, 2005, at 10:30 a.m. in room B-2.

### Senate Bill 1097 - Widow's Benefits

Vice-Chairman Jones introduced Yvonne Vieira-Cardoza, Deputy General Counsel and Workers' Compensation Trust Fund Manager. Vice-Chairman Jones requested that Attorney Vieira-Cardoza inform the Council Members of the impact this legislation would place on the Trust Fund.

Attorney Vieira-Cardoza provided Council Members with a brief background into

#### Section 35C (latency benefits).

She explained that if this particular bill passes it would overturn the McDonough case and would have the potential to affect other cases as well.

Attorney Vieira-Cardoza stated that her biggest concern was with specific language in the bill that states, "irrespective of whether the employer is subject to this chapter." She noted that this wording could prove costly to the Trust Fund since eligibility would be expanded to include out-of-state employees, federal employees, police, and firefighters.

Attorney Vieira-Cardoza stated that it is unfair to provide benefits to employees who are not subject to Chapter 152 and have not paid into the system.

Attorney Vieira-Cardoza stated that she had met with Senator Hart's office to explain the impact this bill would have on the Trust Fund. Attorney Vieira-Cardoza concluded by stating that workers' compensation is not a life insurance policy, but instead a system that provides medical and indemnity benefits to workers who are injured on the job.

Vice-Chairman Jones suggested that the Council might want to work with the legislature on refining the language in this bill. He noted that it might be useful for the Council to provide testimony at the hearing stating the consequences of this bill passing.

### Senate Bill 1099 - Civil Action Against Employers

Council Member Mickey Long gave a brief explanation of Senate Bill 1099. He stated that this legislation would allow at least 10 people to bring a civil action against an employer to recover amounts that should have been paid in securing workers' compensation insurance. CM Long explained that a major portion of the money would be deposited into the DIA's Trust Fund. He noted that this bill sends a message to the industry that everyone must abide by the same rules.

Vice-Chairman Jones reported that AIM had supported this bill last legislative session.

He informed the Council that he was uncertain if AIM could continue to support this bill due to the recent confusion created by the new independent contractor law. The Vice-Chairman stated that before he can make any commitment to this bill, AIM would have to examine the Attorney General's scope of the law.

### Senate Bill 1089 / Senate Bill 1095 - Scar-Based Disfigurement

Executive Director Burton directed the Council's attention to Senate Bill 1089 and Senate Bill 1095. He reported that both bills would eliminate the requirement that scarring appear only on the face, neck or hands to be compensable. He noted that the difference between the two bills was that Senate Bill 1089 would limit compensation for scarring caused by a medical or surgical procedure to the face, neck or hands. The Executive

Director noted that neither bill would affect the \$15,000 maximum.

#### House Bill 1595 - Scarring / Burial Expenses / Partial Disability

Vice-Chairman Jones stated that there was another scar-based disfigurement bill (House 1595) that used a multiplier (AWW x 29) to determine the maximum benefit level. CM Falcone noted that a study conducted in 2000 by Tillinghast concluded that there would be a relatively minimal impact on system costs if scar-based disfigurements benefits reverted to their pre-1991 levels.

The Executive Director noted that House Bill 1595 also contained two other sections involving burial expenses and partial disability. The Executive Director reported that Section 2 of this bill would increase the amount an insurer is required to pay for burial expenses from \$4,000 to \$8,000. Mr. Burton stated that National Funeral Directors Association had reported that the average funeral and burial cost in Massachusetts was \$6,177 in 2001.

Attorney Alan Pierce, President of the Massachusetts Academy of Trial Attorneys, addressed the Council Members regarding Section 3 of House Bill 1595, concerning the extension of Partial Incapacity Benefits under section 35. Attorney Pierce explained that the bill would extend the eligibility period from 260 weeks to 520 weeks. He stated that the current law allows for benefits to be extended for 6 to 10 years under certain circumstances. However, he noted that during the last 14 years, he has only had a few clients that have met the criteria for extension.

Attorney Pierce explained that this bill would allow the Administrative Judge to make a determination to allow the injured worker to extend their benefits. Attorney Pierce stated that he believed that this bill would benefit those who are not quite bad enough to have a "Permanent Total" disability but would fit into the category of "Permanent Partial" disability in situations that fail them.

#### Senate Bill 1109 - Third Party Lawsuits - Employee Leasing Companies

Executive Director Burton directed the Council's attention to Senate Bill 1109 which would bar an injured worker from filing a lawsuit against an Employee Leasing Company or its Client Company.

CM Long voiced concern regarding this bill because it has the potential to increase the opportunity for fraud. He stated that this bill gives the Client Company no incentive to focus on safety issues because the policy will be in the name of the Employee Leasing Company. CM Long stated that Client Companies have a history of "shopping" for a new Employee Leasing Company once their injury experience becomes poor. Vice-Chairman Jones suggested that the Council Members continue reviewing the pending bills and a vote can be taken at the June 8th Advisory Council meeting. Vice-Chairman Jones adjourned the meeting at approximately 11:45 a.m.

**The next regular meeting of the Advisory Council is scheduled for June 8, 2005 at 9:00 AM, at the Division of Industrial Accidents, at 600 Washington Street, 7th Floor, Boston, MA 02111.**