

**Massachusetts Workers' Compensation
Advisory Council Minutes**

May 12, 2004

Department of Industrial Accidents

600 Washington Street, 7th Floor

Boston, MA 02111

Present: Chairman Thomas M. Jones; Vice-Chairman Paul Byrne. CM: Robert Banks; Edmund C. Corcoran, Jr.; Ines Leonardo; Mickey Long; Alan S. Pierce; Carol Falcone; Joan Lenihan, (Department of Labor and Workforce Development).

Also Present: DIA: Acting Commissioner John Chapman; Senior Judge Daniel O'Shea; Richard Morris, First Deputy Director of Administration.

Advisory Council Staff: Andrew Burton; Evelyn Flanagan; Ann Helgran.

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

Agenda:

DIA Update

Action Items

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Study Evaluating Competitive Pricing for WC in MA

Discussion on Legal Opinion Re: Special Reserve Account

Executive Director Update

Miscellaneous

Chairman's Welcome

Chairman Jones opened today's meeting.

DIA UPDATE

Judicial Update

Senior Judge Daniel O'Shea updated Advisory Council Members on the information contained within the DIA's vital statistic report (see attached). Conference Queue: 1,590; Hearing Queue: 1,821; Reviewing Board Inventory: 145; Impartial Exams: 3,769 (116 waivers). There are 258 impartial physicians contracted with the DIA.

The Senior Judge stated that the judicial appointments were proceeding well. The Lt. Governor is presently interviewing the sitting judges who are seeking reappointment, as well as the new applicants. Dates have been scheduled with the Governor's Council for both Judge William McCarthy and Judge Martine Carroll. The Governor's Council has requested that the names of candidates be spaced out and not forwarded all at once.

According to the Massachusetts Constitution, elected officials have only 30 days to act once a name is forwarded to them. The Senior Judge acknowledged the Governor's Executive Order as one of the reasons the process has remained on track and running smoothly. The Senior Judge explained that the impartial physician roster had increased slightly last month. However, the Senior Judge noted that western Massachusetts has experienced difficulty with recruiting new doctors. In an effort to address the excessive use of impartial exams, the Senior Judge sent an advisory interpretation to the Administrative Judges stating that the impartial exam is only to be used when there is a meaningful medical dispute.

The Senior Judge stated that during the week of judicial training (June 17, 2004) the DIA will not schedule any cases. He also noted that cases will not be scheduled for June 30th or July 1st in Worcester because the office will be relocated to 340 Main Street.

The Senior Judge further indicated that cases had to be rescheduled during the upcoming Democratic National Convention, which is to be held the last week in July. He told the Council that this decision was made after considering a number of factors including, transportation problems and the numerous request from all parties for date changes. Chairman Jones thanked the Senior Judge for his update. Chairman Jones asked that the Executive Director give his update at this time.

EXECUTIVE DIRECTOR UPDATE

The Executive Director, Andrew Burton, informed Council members that the House Ways & Means Committee had released their FY'2005 budget recommendation on April 14th and appropriated the DIA a budget of \$18,764,222. Mr. Burton stated that this

budget represented a \$658,155 decrease from the Governor's budget recommendation (House 1) which was supported by the Advisory Council. The Executive Director stated that he had sent a letter to the Senate Ways & Means Committee to inform them of the Advisory Council's budgetary concerns. Along with the Council's support for the House 1 line-item, the letter addressed the following concerns: that not less than \$800,000 be allotted for the Safety Grant Program; support for the outside Section #397 (suspension of licenses); and a request that the DLWD's line-item receive adequate funding.

Mr. Burton noted that Tillinghast would not be conducting the Insurance Rate Filing Analysis. He stated that he had contacted all of the vendors on the statewide contract, asking if they have certified actuaries on staff. The Executive

Director explained that the next step for the Council would be to create a subcommittee that would be involved in interviewing the eligible vendors.

Chairman Jones informed Council Members that the Department of Labor and Workforce Development had recently been separated into two agencies. The Chairman explained that Jane Edmonds would be the Director of Workforce Development while Angelo Buonopane would serve as the Director of Labor. Mr. Jones recognized John Chapman who was appointed as Acting Commissioner for the Department of Industrial Accidents.

The Executive Director recognized and congratulated Council Member Robert Banks for his involvement in organizing the Run for Research, which has raised millions of dollars for the American Liver Foundation.

STUDY EVALUATING COMPETITIVE PRICING FOR W/C IN MA

A presentation was given to Council Members on the benefits of moving to a competitive pricing system for workers' compensation insurance in Massachusetts. Chairman Jones briefly introduced the following guest speakers: Mr. James T. Harrington (Executive Director, Massachusetts Insurance Federation), Mr. Donald C. Hillman, Esq., and Mr. Donald F. Baldini (AVP & Senior Legislative Council, Liberty Mutual).

In an introductory statement, Mr. Harrington advocated for competitive pricing in Massachusetts. He stated that his company, Massachusetts Insurance Federation Inc., retained Attorney Hillman to research this issue. The Massachusetts Insurance

Federation is very interested in advancing House Bill 3293 which would change the way in which prices are determined for workers' compensation insurance in Massachusetts.

Currently, Massachusetts utilizes an administered pricing system.

Attorney Hillman offered the Council a presentation, which consisted of both a slide show and a summary of his study (see attached). Attorney Hillman's research focused on the benefits of competitive pricing vs. administered pricing systems. He explained that the Massachusetts Insurance Federation had hired him to perform an advocacy study by analyzing data gathered from other states and comparing the market developments.

Attorney Hillman outlined the major study activities, which included: Historical Overview; Analysis of Developments since 1995; California Market Analysis; and Public Policy Analysis. He also referred to previous studies done by Palmer Bellevue ("Palmer Bellevue Report," 1995) and J.H. Albert Insurance Advisor, Inc., retained by the Advisory Council ("Council Report," 1995). Both studies had concluded that some form of competition could be beneficial to the market's participants.

In 1981, Arkansas became the first state to have a competitive rating system. Since that time, 37 states have replaced their administered pricing systems with some form of a competitive rating system. In the last 20 years, the market has done a complete reversal.

In 1981, the market was dominated by an administered pricing system, whereas, in 2001, the market had become predominately a competitive pricing system. Massachusetts is not among the states that have made a transition to competitive pricing.

Since 1995, the study identified six states that have made the transition from an administered pricing system to a competitive pricing system. Those states were: California, North Carolina, Montana, Mississippi, Tennessee and Alaska. With the exception of California, none have experienced any market problems.

Attorney Hillman discussed the administered pricing system vs. the competitive rating systems in these states. In his comparative analysis he found that premium levels are lower in the competitive pricing systems. He indicated that the data for all study states suggested that rates and premiums were reduced after the introduction of competitive pricing and that there was a measurable decrease in the population of the residual market.

He did not find adverse developments in any of the study states which could be attributed to the change in pricing systems. During the period of transition from administered pricing to competitive pricing, the market showed no disruptive impact on changes in premium. Changes that did occur were primarily due to the hardening and softening of the workers' compensation insurance markets nationally.

Attorney Hillman reported that the study supported his findings that Massachusetts can safely and successfully adopt the competitive loss cost pricing system for workers' compensation insurance as proposed in House Bill 3293. Attorney Hillman noted that the impact on the residual market would and should still be carefully monitored by the Commissioner of Insurance as permitted by the proposed legislation. In closing, Mr. Baldini informed Council Members that Liberty Mutual has expressed support for this bill and encourages future discussions. Mr. Baldini suggested that Council Members feel free to contact himself, Mr. Harrington or Attorney Hillman if they had any questions regarding this matter.

Chairman Jones thanked the guest for their presentation and opened the discussion for any questions or comments from Council Members.

Council Member Mickey Long requested that Attorney Hillman provide further detail regarding what constitutes a "hardening" and "softening" of the insurance market. Attorney Hillman stated that during a hardening of the market less capital is invested into the market as opposed to a soft market where more capital is invested.

Attorney Hillman explained that during his analysis, the approach he undertook to study Massachusetts was unique because of the size of the residual market. In short Massachusetts has a rate which essentially is uniform for the residual market and for the voluntary market. The uniformity of that rate naturally ends up in a situation where there is a subsidy that is directed from the voluntary market to the residual market. He noted that any approach to reforming the marketplace has to include consideration of a differential rate to reflect the higher cost of the residual market.

A number of other studies showed that premium levels are lower in competitive pricing systems, although Attorney Hillman's approach did not necessarily offer the same results.

Attorney Hillman believes that competitive pricing would attract new business into the marketplace in Massachusetts. He noted that there are no structural issues that would create impediments to the transition. He believed his findings support

the adoption of House Bill 3293, which states competitive pricing will end up benefiting all market participants. Attorney Hillman stated that there is no indication that what happened in California would happen in Massachusetts as California has very specific and unique characteristics that are not applicable to the market situation in Massachusetts.

Council Members questioned whether there would be expectations of an increase in premiums in the short term. In response, Mr. Hillman stated that he was not suggesting an unregulated system. The Commissioner of Insurance would be cognizant of the fact that the state would be going through a transition and it would be incumbent upon the Commissioner to make sure that any extreme discontinuity in rates would not occur.

Council Member Mickey Long inquired if there were any other studies that he could review. Executive Director Andrew Burton stated that he would provide the information to him. Mr. Long voiced concern about the process used for competitive pricing systems and whether this would open the door for agent shopping. One issue that concerns him is premium invasion, which the study did not address.

Attorney Hillman suggested that Mr. Long read one of the books addressing premium invasion. He indicated that premium invasion and other types of fraud are motivated by two things: (1) unstable market places, and (2) rapidly increasing rates. Mr. Baldini followed up by stating that one of the predominant causes of premium invasion is centered around misclassification rather than competitive pricing.

Council Members were also concerned about the money saved if Massachusetts chose to transition from administered pricing to a competitive rating system. Specifically, Council Members wanted to know how the savings would be distributed to employers since assessments pay for the workers compensation system in Massachusetts.

DIA UPDATE (continued)

Stop Work Orders/Caseload Statistics

Mr. Morris updated Council Members on the Stop Work Order (SWO) and Caseload Statistics (see attached report). Total stop work orders issued: 28; total compliance investigations completed: 1,055; total fines collected: \$39,899. For FY'04, the total SWO fines collected are \$313,682.

The administration has reported that the Office of Investigations continues to improve the Stop Work Order and fine collection process. It was explained that a greater emphasis is being placed on the investigation process. As a result, the enforcement rate of SWOs has improved by over fifty percent.

Council Member Falcone inquired if Mr. Morris would be providing the outstanding amount owed in stop work order fines.

Mr. Morris explained that Mr. Tynan had requested that the Advisory Council wait another month for an update so that he could be available to alleviate and concerns the Council may have regarding this information. Mr. Tynan was unable to attend today's meeting and plans on giving a presentation in June.

Mr. Morris continued his update of the monthly vital statistics. Total number of cases filed for April 2004: 1,167. Total number of cases filed for April 2003: 1,686. Total number of cases filed for fiscal year 2004: 13,525. Total number of First

Report's filed for April 2004: 2,564. Total number of First Report's filed in fiscal year 2004 (to date): 30,750. Total number of First Report's filed in fiscal year 2003: 36,641. Total number of First Report filed on-line using the DIA's Information Portal on the Internet: 405. Mr. Morris stated that the increasing number of on-line submissions is an indicator of Oracle's early success. He expects that as word gets out, more companies will utilize the services and avoid possible fines.

Estimated uninsured claims (§65) filed for fiscal year 2004: 150 (they will probably equal or exceed 2003). One note of caution for FY'05, the DIA is currently managing six quadriplegic cases and some are due to settle next year. Historically, the DIA has never managed this many quadriplegic cases at one time. This number has been incorporated into the budget for next year. Uninsured claims paid by the Trust Fund for fiscal year 2004: \$3,302,394. Total number of Section 65 Claims filed for fiscal year 2003: 233.

Total number of uninsured claims paid by the Trust Fund for fiscal year 2003: \$3.78 million. Due to the increase in uninsured claims, the DIA is redoubling its efforts to prevent uninsured injuries by stepping up enforcement.

Council Member Falcone asked if the Department could provided the Council with a list of repeat offenders dating back two years.

Council Member Falcone also requested that the Council receive the list of companies that were issued stop work orders.

Mr. Morris stated that it would be provided to the Council in June. Number of §37/§37A petitions filed in fiscal year 2004: 296. Number of §37/§37A petitions paid in fiscal year 2004: 452 (est.). The amount paid on these claims in fiscal year 2004: \$18,052,510. Number of §37/37A petitions filed in fiscal year 2003 (to date): 284. Number of §37/§37A petitions paid in fiscal year 2003: 257. The amount paid on these claims in fiscal year 2003: \$19.8 million. COLA reimbursement payments to insurers in FY'04 (to date): \$18,732,944. COLA reimbursements to insurers in FY'03: \$17,809,263.

Budget/Personnel Issues

The total number of positions filled by full-time employees at the DIA (including the WCTF) as of April 2004: 286 (255 DIA employees, 31 WCTF employees). The new positions added were both located in the Trust Fund, one position is a Trust Fund attorney and the other is the Trust Fund Supervisor. The DIA has no contract employees at this time. Five temporary employees are being utilized within the DIA as of this report.

Council Member Falcone requested that the DIA provide Council Members with an organizational chart at the next meeting.

Acting Commissioner John Chapman was pleased to announce to Council Members that the DIA's public awareness campaign is underway and the selected spokesman for the campaign is Bob Vila. Acting Commissioner Chapman stated that there would be three separate commercials geared toward educating both employers and employees.

Mr. Chapman anticipates that the advertising campaign will begin approximately on June 1st. The DIA will also have print media and posters on public transportation. The agency is attempting to perform this campaign in the most cost-effective manner.

Mr. Morris provided the Council Members with an update on the construction of the Worcester Office. The agency will be relocating to office space located at 340 Main Street (the Commerce Bank Building) in downtown Worcester. There is 9,188 square feet of net usable office space (although the DIA will only pay for 8,232 square feet).

The cost to the DIA is \$8.96 psf in year-one, \$9.86 psf in year-two, \$10.75 psf in yearthree \$11.65 psf in year-four, and \$12.54 in year-five. The term of the lease agreement is for five years with a one five-year renewal option.

Council Member Falcone requested that the Advisory staff review House Bill 4552. This proposed legislation involves a pilot project for Third Party Administrators. Council Member Falcone indicated that there has been great opposition to this bill. She stated that she would forward the Advisory Council a letter in opposition to House Bill 4552 which had been sent to the Governor by different segments of the population, including Associated Industries of Massachusetts, Liberty Mutual, and the AFL-CIO.

Chairman Jones thanked members of the department for their update and participation in today's meeting. The Chairman asked the Executive Director to move the discussion regarding obtaining a legal opinion on the Special Reserve Account to next month's agenda.

Chairman Jones directed the Executive Director to draft a letter to the Conference Committee endorsing the Council Members approval of the budget.

Chairman Jones adjourned today's meeting at 11:30 a.m.

The next regular meeting of the Advisory Council is scheduled for June 9, 2004 at 10:00 AM, Division of Industrial Accidents, 7th Floor Conference Room, at 600 Washington Street, Boston, MA 02111.