

**Massachusetts Workers' Compensation
Advisory Council Minutes**

June 8, 2005

Department of Industrial Accidents

600 Washington Street, 7th Floor

Boston, MA 02111

Present: Vice-Chairman Thomas M. Jones. CM: Mickey Long; Jeanne-Marie Boylan; John A. Pulgini; John D. Boyle; Edmund C. Corcoran; Carol Falcone; Ken Paradis; Peter Scantalides, Department of Business & Technology; John Ziembra, Department of Labor.

Also Present: DIA: John Chapman, Commissioner; James LaMothe, Senior Judge; William Taupier, Deputy Director of Administration and EDP; Gayl Mileszko, Chief of Staff, DOL; Karen Gibbons, WCRIB; Alan S. Pierce, MA Academy of Trial Attorneys.

Advisory Council Staff: Andrew Burton.

Absent: Chairman Paul Byrne; CM: Tony Frias; Robert Banks; Bruce Cochrane; Kenneth Paradis.

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 - May 11, 2005

Recommendations on Workers' Compensation Legislation

Chairman's Welcome

Vice-Chairman Tom Jones began the meeting at 9:00 a.m. by introducing the new Director of Labor, John Ziembra.

Director Ziembra will serve as an ex-officio member of the Advisory Council representing the Department of Labor. Director

Ziemba presented the Council with a brief description of his background. 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 for June of 2005 (see attached). Conference Queue: 283; Hearing Queue: 1,802; Reviewing Board Inventory: 136; Impartial Exams: 4,373 (112 waivers).

Senior Judge LaMothe reported that he is currently attempting to measure the time frames for each stage of dispute resolution. The Senior Judge noted that the average time for a claim to proceed from conciliation to conference is 7 weeks.

Senior Judge LaMothe referred to a report included in the Council Member's packets entitled, "Decisions Outstanding Over 6 Months." The Senior Judge stated that there are currently 14 Judges with cases overdue by more than six months from the first scheduled hearing date (142 cases). The Senior Judge cautioned that on occasion a case does not move forward on the first scheduled hearing date due to rescheduling or continuances.

Senior Judge LaMothe stated that he would ultimately like to measure the time frame between the close of record to the decision.

Senior Judge LaMothe reported that there is still a vacancy on the Reviewing Board. He noted that Judge Bean's term expires on June 26, 2005 and that Judge Hernandez's term expires in December. The Senior Judge is under the impression that the Governor will convene a Nominating Panel in the fall to address both Administrative Judge positions.

In addition, the Senior Judge stated that he still remains in his Administrative Judge term and continues to write decisions. The Senior Judge reported that he has finished interviewing candidates for the management position in the Impartial Unit and that he expects to hire somebody in the next few weeks.

Stop Work Orders/Caseload Statistics

Mr. Taupier updated Council Members on the Stop Work Order (SWO) and Caseload Statistics for May of 2005 (see attached). Total compliance investigations completed: 1,903; total SWOs issued: 19; total number of SWOs issued for FY'05: 173; total fines collected for May of 2005: \$11,526; total fines collected in FY'05: \$250,585; 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 May of 2005: 1,377; total number of cases filed for FY'05 (to date): 14,600; total number of cases filed for fiscal year 2004: 16,394; total number of First Report's filed for May of 2005: 2,907; total number of First Report's filed for FY'05 (to date): 33,904.

In May of 2005, a total of 717 First Reports were filed on-line using the DIA's Information Portal on the Internet (24.66% of FRI filings). By comparison, at this point last year, less than 5% of FRIs were submitted on-line. 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 15,927 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 (to date): 200 (with 179 actual uninsured injuries); uninsured claims paid by the Trust Fund for fiscal year 2005 (to date): \$4,265,258; 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 proceeded with the vital statistics for the Second Injury Fund. Number of §37/37A petitions filed in fiscal year 2005 (to date): 293; number of §37/37A petitions paid in fiscal year 2005 (to date): 499; amount paid on these claims in fiscal year 2005 (to date): \$22,740,217; number of §37/37A petitions filed in fiscal year 2004: 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): \$4,263,738; COLA reimbursements to insurers in FY'04: \$19,806,728.

Budget/Personnel Issues

Mr. Taupier reported that as of May 2005, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 272 (239 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. Mr. Taupier noted that the DIA is utilizing 3 legal interns who are assisting the Office of Legal Counsel.

ACTION ITEMS

Vice-Chairman Jones asked for a motion to accept the Minutes for May 11, 2005.

Motion made to accept the Minutes for May 11, 2005.

MMS - passed.

RECOMMENDATIONS ON WORKERS' COMPENSATION LEGISLATION

Vice-Chairman Jones began today's discussion on workers' compensation legislation. He informed the members that the Joint Committee on Labor and Workforce Development is holding a hearing to review all workers' compensation legislation on Wednesday, June 29, 2005, at 10:30 a.m. in room B-2. He stated that it is important for the Council vote to endorse specific bills so that recommendations can be provided at the hearing.

Suspension of Driver's License

Executive Director Andrew Burton, reviewed proposed legislation that would institute inter-agency cooperation between the DIA and the Registry of Motor Vehicles in

suspending the driver's license of an employer who is operating without workers' compensation insurance.

Council Member Boyle expressed concern over the broadness of the language as written.

Discussion followed. Vice-Chairman Jones asked if there was a motion to either support or oppose this proposal.

Motion made to support legislation that would institute inter-agency cooperation between the DIA and the Registry of Motor Vehicles in suspending the driver's license of an employer who is operating without workers' compensation insurance.

MMS - passed.

Senate 1097 - Widow's Benefit

Mr. Taupier reviewed Senate 1097 with Council Members. He stated that this bill would have a significant impact on the Trust Fund because it expands benefit eligibility to include employers who are not even subject to the Workers' Compensation Act. Council Members expressed their displeasure with the wording of this legislation.

Vice-Chairman Jones asked if there was a motion to either support or oppose this legislation.

Motion made to oppose Senate Bill 1097 regarding "Widow's Benefits."

MMS - passed.

Senate Bill 1099 - Civil Action Against Employers

Vice-Chairman Jones began the discussion and expressed his concern on how this proposed legislation would affect the recently passed independent contractor law. He noted that the Advisory Council had previously voted to endorse this bill "in-concept" during the 2003-2004 Legislative Session.

Council Member Long reviewed the bill with Council Members. Discussion followed on possible amendments to address the independent contractor law.

Vice-Chairman Jones asked if there was a motion to either support or oppose this legislation.

Motion made to support Senate Bill 1099 as written.

MMS - did not pass.

Further discussion followed and a short recess was taken.

Vice-Chairman Jones asked if there was a motion to reconsider supporting or opposing this legislation.

Motion made to support Senate Bill 1099 regarding a "Civil Action Against Employers."

MMS - passed.

House Bill 1606 and Senate Bill 1095 - Scar-Based Disfigurement

Vice-Chairman Jones reviewed four pieces of legislation that would amend benefits for scar-based disfigurement. The Chairman noted that House Bill 1606 and Senate Bill 1095 were similar to bills supported by the Council in past legislative

sessions. Council Members discussed whether the scarring benefit should be tied to an index like the Average Weekly Wage.

Vice-Chairman Jones asked if there was a motion to support or oppose House Bill 1606 and Senate Bill 1095. Motion Made to support House Bill 1606 and Senate Bill 1095 regarding scar-based disfigurement and stating that the Advisory Council encourages the Legislature to revisit increasing the \$15,000 maximum benefit and how it is determined.

MMS - passed.

Funeral and Burial Expenses

Executive Director Burton discussed legislation that would increase the benefit for funeral and burial expenses from \$4,000 to \$8,000. The Executive Director noted that National Funeral Directors Association estimated that the national average for this benefit was \$6,500 in 2004. Discussion followed.

Vice-Chairman Jones asked for a motion to support or oppose raising the burial allowance.

Motion made to support raising the burial allowance from \$4,000 to "not exceeding \$8,000" if filed as a stand-alone bill.

MMS - passed.

House Bill 1604 - Workers' Compensation Reinsurance Pool

Vice-Chairman Jones reviewed House Bill 1604 in regards to Third Party Administrator's servicing claims within the Workers' Compensation Reinsurance Pool.

Vice-Chairman Jones asked if there was a motion to support or oppose House Bill 1604. Motion made to oppose House Bill 1604 regarding the "Workers' Compensation Reinsurance Pool."

MMS - passed.

House Bill 3776 - Rate of Reimbursement - Health Care Services

Council Member Pulgini reviewed House Bill 3776 with Council Members. Mr. Pulgini noted that he had contacted the Massachusetts Orthopedic Association and stated that they expressed support for this bill. Discussion followed. Vice-Chairman Jones asked if there was a motion to support or oppose House Bill 3776.

Motion made to state at the Workers' Compensation Hearing that the Advisory Council unanimously acknowledges the fact that medical reimbursement rates set by the Division of Health Care Finance & Policy are inadequate and need to be properly raised.

MMS - passed.

Vice-Chairman Jones adjourned the meeting at approximately 11:45 a.m.

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