

**Massachusetts Workers' Compensation  
Advisory Council Minutes**

June 9, 2004

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

**Present:** Chairman Thomas M. Jones; Vice-Chairman Paul Byrne. CM: Ines Leonardo; Mickey Long; Alan S. Pierce; Bruce Cochrane.

**Also Present:** DIA: Acting Commissioner John Chapman; Senior Judge Daniel O'Shea; Jack Tynan, Director of Administration; Greg White, General Counsel; Yvonne Vieira-Cardoza, Deputy General Counsel; Richard Morris, First Deputy Director of Administration; William Taupier, Deputy Director of Administration; Marlene McGarry; Carolyn Marcotte.

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

**Absent:** CM: Robert Banks; Edmund C. Corcoran Jr.; Carol Falcone; Jeanne-Marie Boylan; Stephen Sampson; Department of Workforce Development; Department of Business and Technology.

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**Agenda:**

DIA Update

Action Items

- Minutes - April 14, 2004
- Minutes - May 12, 2004

House Bill 4552 - Assigned Risk Pool - Pilot Project for TPAs

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: 1,878; Hearing Queue: 1,728; Reviewing Board Inventory: 152; Impartial Exams: 4,036 (124 waivers). There are 258 impartial physicians contracted with the DIA.

The Senior Judge indicated that the number of conferences in the queue remain high compared to last year's figures (482). The Senior Judge explained that once the new judges are appointed to permanent positions (approximately August/September), the queue is expected to decrease dramatically. The Senior Judge stated that the hearing queue appears to be improving when compared to the queue at the same time last year.

He also noted that the Reviewing Board inventory had increased slightly from last month and that impartial exams are on track.

The Senior Judge indicated that the judicial appointment process continues to proceed in a smooth and timely fashion. He explained that the Governor's Council has been interviewing judicial candidates on a weekly basis.

Chairman Jones thanked the Senior Judge for his update.

## Stop Work Orders/Caseload Statistics

Mr. Taupier updated Council Members on the Stop Work Order (SWO) and Caseload Statistics (see attached report). Total stop work orders issued: 46; total compliance investigations completed: 1,244; total fines collected: \$12,581. For FY'04, the total SWO fines collected are \$326,263.

Mr. Taupier indicated that the new SWO process has successfully allowed the agency to address the compliance rate. He stated that by narrowing the scope of investigations, companies are more responsive and less likely to violate the law. Mr. Taupier explained that the new process encourages companies to comply in a timely fashion. In the past, companies often waited weeks before addressing a SWO, resulting in large fines. Mr. Taupier stated that current SWO compliance rate is around 90-95%, whereas in the past it was around 20-30%. He explained that the majority of companies that are issued a SWO are getting their policies within five (5) business days.

Mr. Taupier continued his update of the monthly vital statistics. Total number of cases filed for May 2004: 1,246. Total number of cases filed for May 2003: 1,340. Total number of cases filed for fiscal year 2004: 14,771. At the current rate, the year-end total will be approximately 16,100 cases filed. Mr. Taupier explained that June has been historically a low-volume month. Total number of First Report's filed for May 2004: 2,659. Total number of First Report's filed in fiscal year 2004 (to date): 33,509. Total number of First Report's filed in fiscal year 2003: 36,641. Total number of First Reports filed on-line using the DIA's Information Portal on the Internet: 537.

Chairman Jones asked Mr. Taupier what vehicle was being utilized by the agency to notify outside sources that it was now possible for First Reports to be filed on-line using the DIA's Information Portal on the Internet. Mr. Taupier stated that two mailings have been forwarded to insurance companies and TPAs. He also stated that when notices have been sent out, the agency had included a tag-along line informing the insurance companies and TPAs that they could file on-line.

Mr. Taupier continued with his update. Estimated uninsured claims (§65) filed for fiscal year 2004: 195. Uninsured claims paid by the Trust Fund for fiscal year 2004: \$3,882,986. 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.

Mr. Taupier explained that the DIA is currently managing six quadriplegic cases, which historically have been very expensive. He noted that it was highly unusual to have so many quadriplegic cases at one time. Mr. Taupier stated that the DIA is anticipating that the payouts for these claims could approach \$6.0 million. Mr. Taupier noted that the agency had factored the expected settlements into next year's budget.

Jack Tynan stated that the KPMG's preliminary numbers indicate that there will be an increase to the employer's assessment rate (currently at 3.670%). Mr. Tynan explained that this increase will most likely be attributed to fiscal pressure on all three areas of the Trust Fund (§65, §37, and the COLA reimbursements).

Mr. Taupier continued with the vital statistics for the Second Injury Fund. Number of §37/§37A petitions filed in fiscal year 2004: 312. Number of §37/§37A petitions paid in fiscal year 2004: 460 (including quarterly payments). The DIA expects the reimbursements for §37/37A to be close to \$20.0 million and anticipates a carryover of \$2 - \$3 million. The amount paid on these claims in fiscal year 2004: \$19,000,827. 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.

Council Member Alan Pierce questioned whether employers are directly benefiting from Trust Fund payments to insurers for §37 claims. Mr. Pierce explained that employers are entitled to an adjustment to their experience modification factors as a result of these reimbursements. Mr. Pierce noted that he would be interested in tracking §37 claims to see if insurers are using the reimbursements in the manner the legislature had intended. Mr. Pierce expressed his concern that insurers could be using the §37 reimbursements as a windfall.

Mr. Taupier proceeded with the vital statistics. COLA reimbursements to insurers in FY'04 (to date): \$18,748,513. COLA reimbursements to insurers in FY'03: \$17,809,263. Mr. Taupier anticipates this figure to reach approximately \$20 million in FY'04. He explained that the DIA has budgeted \$25 million for COLA reimbursements in FY'05 to adequately cover cost.

#### Budget/Personnel Issues

The total number of positions filled by full-time employees at the DIA (including the WCTF) as of April 2004: 288 (255 DIA employees, 33 WCTF employees). The two new positions added were both located in the Trust Fund. The DIA has no contract employees at this time. Five temporary employees are being utilized within the DIA as of this report.

#### Advertising Campaign - Mandatory Insurance

General Counsel Greg White offered a presentation on the agency's new public awareness campaign that is aimed at educating employers in the Commonwealth about the mandatory requirement to provide workers' compensation insurance.

Attorney White stated that he had met with Council Members last summer to outline his goals for the year as it related to Office of Legal Counsel and the Workers' Compensation Trust Fund. Attorney White explained that a previous audit had

revealed that very little was being done to enforce the stop work orders or to collect the fines. He explained that the DIA had decided to address this problem by initiating a three-part process: 1) revising the system; 2) enhancing the tools and resources for investigators; 3) and creating a public awareness campaign.

Attorney White explained that the prior system was destined to fail because investigations were based on quantity rather than quality. He explained that under the prior system, thousands of stop work orders were being issued to businesses without adequate up-front investigations. This resulted in millions of dollars in fines that would never be collected as many companies no longer existed.

Attorney White explained that DIA investigators have been brought in-house and are actively performing investigations to determine if: (a) a company really exists; (b) the company is operating in Massachusetts with employees, and (c) the company did not have worker's compensation insurance prior to the SWO being issued, giving the company ample notice to come into compliance. Attorney White stated that when all three elements are met and a company has failed to comply with the law, a SWO is issued.

Attorney White explained that fines have increased from a 7% collection rate in the past, to 98% collection rate last quarter. Attorney White stated that a portion of this success can be attributed to updated computers and equipment coupled with the employment of investigators with sound experience. He further noted that enhanced training has been provided, including an upcoming three-day seminar, which will concentrate on the aspects of surveillance. Also, the DIA has made it easier for companies to pay their fines by using credit cards.

Attorney White noted that the DIA introduced their statewide public awareness campaign at the beginning of the week. The campaign is designed to coincide with seasonal businesses since they have historically had a high-risk for injuries. The spokesman for the bilingual (English and Spanish) television ads will be Bob Vila. Attorney White explained that the focus of the media campaign will be on television, radio, newspapers and billboards. The campaign will run through the summer. Attorney White stated that the intent of the campaign is to reduce the number of claims against the Trust Fund, resulting in reduced assessments to employers. Attorney White explained that the title of the campaign is "Putting the Worker First." The DIA believes that all parties will benefit from the campaign, including employees, employers, and insurers.

Attorney White stated that another feature of this campaign is a hot-line (1-877-MASSAFE) that allows the public to phone in tips or to seek additional information. He noted that the majority of funds expended on this campaign was on media distribution. The DIA is currently requesting cooperation from insurers to help co-sponsor billboards, etc.

Commissioner John Chapman addressed Council Members regarding the assessment rate calculation. The Commissioner indicated that the DIA does not have the exact figure at this point, but it appears there may be small increase. The Commissioner alluded that an increase to the assessment rate would be a result of the heavy burden on the Trust Fund (high volume of §37s, COLAs, and the §65 quadriplegic cases). Commissioner Chapman stated that the DIA is diligently working to ensure that the calculations are more accurate and tighter. He ensured the Council that the administration has remained involved in the calculations, making sure that the data is as accurate as it can possibly be.

Council Member Long requested that Acting Commissioner Chapman consider making arrangements with the building trades to discuss the public awareness campaign. Acting Commissioner Chapman stated that the agency would be glad to provide a presentation. He stated that the agency would also be contacting out to other labor leaders in the Commonwealth to inform them about this campaign.

Senate Budget Amendment - Widow's Benefits Executive Director Andrew Burton gave a brief summary of the Senate Budget amendment that was filed by Senator Jack Hart. The Executive Director explained that the Senate Budget amendment would directly affect a recent decision by the State Supreme Judicial Court ( *McDonough's Case*) by altering the definition of "average weekly wage" exclusively for Section 35C (widow's benefits) cases.

The Executive Director stated that according to the SJC decision in the *McDonough Case*, the widow of an employee who died as a result of past asbestos exposure is not entitled to receive compensation under Section 35C since the deceased had voluntarily retired in 1991 and was not receiving wages on the date of his death. Mr. Burton explained that the Workers' Compensation Trust Fund is responsible for reimbursing insurers for certain payments made for Section 35C latency claims.

Chairman Jones introduced Deputy General Counsel Yvonne Vieira-Cardoza. Attorney Vieira-Cardoza is also manager of the Workers' Compensation Trust Fund. She was asked to give a brief synopsis of the Senate Budget Amendment concerning widow's benefits.

Deputy General Counsel Yvonne Vieira-Cardoza discussed the pending §35C budget amendment. Attorney Vieira-Cardoza explained that the amendment has the potential to overrule past cases and could put the Trust Fund at a greater risk of exposure. Attorney Vieira-Cardoza stated that the implications from this amendment could make out-of-state employers (people who do not pay into the system) eligible for benefits.

### **ACTION ITEMS**

Chairman Jones asked for a motion to accept the Minutes for April 14, 2004. Motion made to accept the Minutes for April 14, 2004.

MMS - passed.

Chairman Jones asked for a motion to accept the Minutes for May 12, 2004. Motion made to accept the Minutes for May 12, 2004.

MMS - passed.

Although no action would be taken at this time, Council Members agreed that the Advisory Council staff would track the amendment to the Widow's Benefit.

### **HOUSE BILL 4552 - ASSIGNED RISK POOL - PILOT PROJECT FOR TPAs**

Chairman Jones introduced House Bill 4552. This legislation was included in the Senate Ways and Means budget recommendation but was removed from the Conference Committee budget.

Executive Director Andrew Burton explained that House Bill 4552 would require the Workers' Compensation Rating & Inspection Bureau (WCRIBM) to initiate a 3-year pilot project whereby Third Party Administrators (TPAs), meeting specific criteria, would provide claims administration for a segment of the policies within the Assigned Risk Pool. The Executive Director explained that the WCRIBM's Governing Committee has taken a strong stance against this pending legislation.

Council Member Bruce Cochrane shared with the members the general consensus of the insurance community. He explained that the TPAs have no vested interest in the assigned risk pool. Mr. Cochrane noted that this particular piece of legislation is perceived by the industry as severely flawed, as the TPAs do not have the same kind of oversight as the carriers have. Carriers are held to a very high standard in terms of solvency, manual stability, etc.

Council Member Cochrane stated that a letter of opposition to House Bill 4552 had been forwarded to Governor Mitt Romney, Senate President Robert Travaglini and House Speaker Thomas Finneran. The letter was signed by the Governing Committee of the Workers' Compensation Rating and Inspection Bureau of Massachusetts, nine listed insurance carriers, AIM, Mass. AFL-CIO, and the Mass. Association of Insurance Agents, all of which have a vested interest in the workers' compensation system.

#### **EXECUTIVE DIRECTOR UPDATE**

The Executive Director thanked the Council Members for their timely cooperation with the phone poll that was conducted on rating the qualifications of two ALJ candidates (Matt Murphy and Mark Horan). The Executive Director explained that both candidates were rated "highly qualified" for the position of Administrative Law Judge.

#### **MISCELLANEOUS**

In closing, Chairman Jones announced that this was Council Member Pierce's last meeting with the Advisory Council. The Chairman stated that Mr. Pierce would be leaving the Council to serve as President of the Massachusetts Academy of Trial Attorneys. At this time, a presentation was made to thank Alan for his time and commitment to the Advisory Council.

Chairman Jones adjourned today's meeting at 11:45 a.m.

**The next regular meeting of the Advisory Council is scheduled for July 14, 2004 at 9:00 AM, Division of Industrial Accidents, 7th Floor Conference Room, at 600 Washington Street, Boston, MA 02111.**