

**Massachusetts Workers' Compensation
Advisory Council Minutes**

July 14, 2004

Department of Industrial Accidents
600 Washington Street, 7th Floor
Boston, MA 02111

Present: Chairman Thomas M. Jones; Vice-Chairman Paul Byrne. CM: Antonio Frias; Robert Banks; Edmund C. Corcoran, Jr.; John A. Pulgini; Carol Falcone, Joan Lenihan (Department of Labor).

Also Present: DIA: Senior Judge Daniel O'Shea; Jack Tynan, Director of Administration; Richard Morris, First Deputy Director of Administration; William Taupier, Deputy Director of Administration; Karen Fabiszewski, Legal Counsel; Marlene McGarry; Karen Gibbons (WCRIBM).

Advisory Council Staff: Andrew Burton; Evelyn Flanagan.

Absent: CM: Mickey Long; Jeanne-Marie Boylan; Stephen Sampson; Kenneth J. Paradis, Jr.; Department of Business and Technology.

Agenda:

DIA Update

Assessment Audit Update - Karen Fabiszewski

Action Items

- Minutes - June 9, 2004

DIA Funding for Annual Survey of Occupational Injuries

Executive Director Update

Miscellaneous

Chairman's Welcome

Chairman Jones opened today's meeting by introducing the new labor representative appointed to the Council, Attorney John A. Pulgini, who will be representing the Laborers Union, Local 223. Mr. Burton reported that the Governor has also appointed Attorney Kenneth Paradis, to serve as a representative of the workers' compensation claimant's bar.

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: 2,088; Hearing Queue: 1,991; Reviewing Board Inventory: 133; Impartial Exams: 4,232 (131 waivers).

The Senior Judge explained that the number of conferences in the queue remains high compared to last year's figures. He stated that he expects the queue to decrease dramatically once the new judges are appointed to permanent positions (approximately August/September). The Senior Judge noted that the hearing queue has remained relatively stable throughout the reappointment process.

The Senior Judge stated that the judicial appointment process is nearly complete and that many of the appointees will be sworn in on July 22nd. He explained that the Governor's Council had recently approved Mark Horan (ALJ), David Sullivan (AJ), and Steven Rose (AJ) for positions on the Industrial Accident Board. He noted that the Governor's Council will soon be reviewing Alice Kokodis and Matthew Murphy.

The Senior Judge explained that of the twelve Judges seeking reappointment, only three did not make it past the Nominating Panel. He explained that these three Judges have been taken out of the queue and are currently wrapping up their cases.

Council Member Corcoran reminded all present that this problem should be an example of what can happen to the system without a two-year trial period for the judges. Mr. Corcoran reiterated his support for House Bill 4465 that would provide a vehicle for the Senior Judge to review judicial performance after the first 24 months.

The Senior Judge explained that House Bill 4465 was amended and engrossed by the Senate on July 13, 2004. He noted that the legislation was amended to subject Administrative Law Judges to the judicial performance review and staggered terms.

Chairman Jones mentioned that the State House News Service had run a story about the Governors Council questioning the Advisory Council's judicial rating system. The article stated that some councilors were questioning why the Advisory Council had rated a particular Judge as "qualified" for reappointment, whereas, a new candidate, who had never served on the IAB, was ranked as "highly qualified."

Council Member Banks explained that by comparing the ratings of new candidates to existing judges was like comparing 'apples to oranges.' He noted that it was impossible to make a comparison to someone who is in the system against someone trying to come into the system.

Council Member Corcoran added that the statute gives the Council only a limited choice of ratings: qualified, highly qualified, or unqualified. Mr. Corcoran noted that any changes to enhance the Council's rating system would have to be done legislatively.

Council Member Falcone suggested that the Council update their guidelines for reviewing the qualifications of judicial candidates by delineating between the two sets of candidates - reappointments and outside candidates. **Council Members recommended that wording be drafted for the next Council meeting clarifying the differences.**

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: 22; total compliance investigations completed: 1,205; total fines collected: \$19,589. For FY'04, the total SWO fines collected are \$345,852. Mr. Taupier reminded Council Members that the figures the Advisory Council was receiving are not final numbers since the books do not close until August 31, 2004.

Mr. Taupier explained that the collection process has been tightened. The DIA is now collecting 90-95% of all fines. He explained that the use of credit cards appears to be helping, offering employers more flexibility. He explained that the DIA has enhanced their communication with employers. Under the old process, the employer would get a phone call within six months, now they get a phone call within two weeks.

Mr. Taupier continued his update of the monthly vital statistics. Total number of cases filed for June 2004: 1,531. Total number of cases filed for May 2003: 1,330. Total number of cases filed for fiscal year 2004: 16,394. A downward trend in cases filed continues. Total number of First Report's filed for June 2004: 3,230. Total number of First Report's filed in fiscal year 2004 (to date): 36,739. Total number of First Reports filed in fiscal year 2003: 36,641. Total number of First Reports filed on-line using the DIA's Information Portal on the Internet: 701.

Mr. Taupier explained that the injury rate is approximately the same, whereas, the number of cases filed has dropped. Mr. Taupier stated that a recent study by the WCRI points out that injured workers are returning to work faster and appear to be more satisfied with their medical treatment. Council Member Banks stated that he is convinced this trend has to do with the safety-conscious attitude seen by many employers. He noted that there is a huge effort towards providing safe workplaces since there is big money that can be saved when safety is considered.

Mr. Taupier continued with his update. Estimated uninsured claims (\$65) filed for fiscal year 2004: 213. Uninsured claims paid by the Trust Fund for fiscal year 2004: \$4,236,402. 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. Tynan stated that the Trust Fund budget will be increasing from \$4.0M to \$6.0M to alleviate costs associated with seven quadriplegic cases in the system. Mr. Tynan noted that the medical expenses for each of the seven cases are very high and that most of the cases have been with the DIA for at least a year.

Council Member Banks questioned why the number of uninsured claims has remained consistent while there is a significant drop in the number of stop work orders issued.

Mr. Tynan explained that the number of uninsured claims decreased from 233 last year to 213 this year. The Director of Administration stated that the new investigations process is barely a year old and that the DIA is optimistic that further

reductions will be seen in the future. He further stated that the Department's advertisement campaign will help add to future reductions in uninsured claims.

Council Members requested that the DIA investigate if any of the 213 uninsured companies have multiple claims against the Trust Fund.

Mr. Tynan stated that the DIA would conduct a review of the last few years and provide the Advisory Council with a list of companies that are multiple offenders.

Council Member Corcoran suggested that the DIA consider adding to their computer system a program that could capture all pertinent information about the payments of an injured employee. He noted that such a program could allow the DIA to review all expenses and evaluate the value of a case from the date of injury forward.

Mr. Taupier continued with the vital statistics for the Second Injury Fund. Number of §37/§37A petitions filed in fiscal year 2004: 365. 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 million and anticipates a carryover of \$2 - \$3 million. The amount paid on these claims in fiscal year 2004: \$18,944,500. 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 Falcone asked why there was an upward trend of §37/37A cases.

Mr. Tynan explained that the upward trend could be attributed to several firms that are almost exclusively doing this type of work for insurance companies.

Chairman Jones questioned whether there was any documentation noting how many injured workers have been reemployed as a result of the second injury fund since that is the whole purpose for awarding benefits.

Council Member Corcoran stated that Council had been told by a previous administration that petitions had to be filed by a certain date and that no other claims would be accepted after the deadline.

Mr. Tynan explained that most of the increased activity is from the period 1986-1991, which are the mid-Act cases. The Director of Administration stated that the period that was closed is from 1991 onward (New-Act cases). However, he explained that the window is not closed for the cases between 1986 through 1991. He stated that 75% of the §37 claims received last year are from 1986-1991.

Mr. Taupier proceeded with the vital statistics. COLA reimbursements to insurers in FY'04 (to date): \$19,131,527. 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. Mr. Taupier added that the exposure to pre-1991 cases, seems to be what is driving the COLAs. He stated that the COLAs are tied to the Average Weekly Wage (AWW).

Budget/Personnel Issues

The total number of positions filled by full-time employees at the DIA (including the WCTF) as of June 2004: 288 (255 DIA employees, 33 WCTF employees). The DIA had one retirement last month and one new hire (manager of conciliation). The DIA has no contract employees at this time. Five temporary employees are being utilized within the DIA as of this report.

Assessment Audit Update

Chairman Jones introduced Karen Fabiszewski, Attorney for the Workers' Compensation Trust Fund. Chairman Jones requested that she brief the new Council Members on the Assessment Audit Project.

Attorney Fabiszewski explained that under §65 of the statute, the Workers' Compensation Trust Fund is funded by assessments that are calculated and collected by insurance companies and charged to insured employers as an additional amount on their policies.

She noted that the insurance companies are responsible for calculating and collecting the assessment from the insured employers and then remitting this money to the department to fund the Trust Fund. The assessment amount is based on a formula found in §65(4)(d) that is used to calculate exactly how much each insured employer owes per share. The money that comes into the Trust Fund is used for a variety of things, including to pay out for uninsured claims, §37 reimbursements, COLAs, latency claims, etc.

Attorney Fabiszewski explained that the project began in 1999 when the DIA hired two outside reviewing firms to inspect insurance company data encompassing a three-year period (1996, 1997, and 1998). She stated that the two reviewing firms examine a sample of the populations from that time period and run calculations to determine if the assessments billed and remitted to the department are accurate. After going through the entire process, based upon what they have found in the sample population, the reviewing firms will issue a preliminary report to the DIA which will extrapolate their findings to the entire population.

Attorney Fabiszewski explained that once a final report is issued, showing the amounts owed to the DIA, it is shared with the insurer accompanied with a letter requesting that they issue payment to the department. If the insurance company has questions or disagrees with the findings, they are given the opportunity to provide additional information or challenge the findings.

Attorney Fabiszewski prepared a chart updating the remittance of assessments (see attached). Table 1 consists of three recently remitted assessments. Both Pacific and Great Northern had previously remitted additional amounts, as shown on table 2. The total amount collected to-date is \$2,972,292.54 in assessments.

Council Member Banks inquired about the total cost to secure these funds. He suggested that a ratio be provided at the next meeting comparing what has been spent versus money received. Mr. Banks also asked the Director of Administration about the future of the project.

Mr. Tynan commented that he and Attorney White would be putting together a proposal for the Acting Commissioner to hire a person with an accounting background to work full-time with the auditing firms. Mr. Tynan explained that Attorney

Fabiszewski has done a great job at handling the assessment audit on a part-time basis. Ultimately, Mr. Tynan would like to automate the entire process with the insurance companies. The Director of Administration stated that the original stage of the audit should be wrapping up at the end of the calendar year.

Council Member Banks suggested that the DIA research how other states secure their revenues (honor system, forms, computerized, etc.).

DIA FUNDING FOR ANNUAL SURVEY OF OCCUPATIONAL INJURIES

The Executive Director gave a brief history of the funding problems experienced by the Division of Occupational Safety. Mr. Burton noted that the legislature did not provide funding for the Annual Survey of Occupational Injuries and Illnesses in the fiscal year 2005 budget. He stated that a subcommittee had met on June 21st and agreed that the survey was beneficial to employees, employers and to the Office of Safety at the DIA.

The Executive Director explained the subcommittee agreed to poll the voting members of the Advisory Council to see if there was an agreement amongst business and labor to support the use money from the Special Reserve Account to pay for costs associated with the survey. Mr. Burton stated that a phone poll was conducted and that the voting members agreed that this would be an appropriate use of DIA funds.

Chairman Jones requested Mr. Burton to draft a letter to the Governor's Chief Legal Counsel, Dan Winslow, requesting a legal opinion on whether the DIA has the authority to use funds from the Special Reserve Account.

Chairman Jones further commented that the survey may end up coming over to the DIA permanently, although no decision has been made to this point.

ACTION ITEMS

Chairman Jones asked for a motion to send a letter to Dan Winslow requesting a legal opinion on the DIA's authority to release funds from the Special Reserve Account established in M.G.L. c. 152. 152, §152, §65(4)(c).

Motion made to send the letter to Dan Winslow.

MMS - passed.

Chairman Jones asked for a motion to accept the Minutes for June 9, 2004.

Motion made to accept the Minutes for June 9, 2004.

MMS - passed.

EXECUTIVE DIRECTOR UPDATE

The Executive Director explained that there were two memorandums included in the Council's packets. Mr. Burton stated that the first memorandum was in regards to the fiscal year 2005 General Appropriations Act. He explained that the DIA's final budget was \$86,938 less than the Governor's Recommendation (House 1) which was endorsed by the Advisory Council. He noted that this appropriation represents a 3.4% increase from last year's final appropriation. Mr. Burton stated

that the line-item contains a provision allowing the Advisory Council to release sufficient funds from the Special Reserve Account "to pay for expenses to continue expansion of the conversion of the agency's computer system from unify to Oracle."

The Executive Director asked Mr. Tynan if he could provide a time frame when the department intended to present Phase III of the Oracle project to the Council.

Mr. Tynan stated that he could not give a definite time frame for Phase III because he is not entirely satisfied with the completion of Phase II. The Director of Administration stated that he has met with each department and put together an outline for Phase III.

Mr. Burton continued with his update. The Executive Director reviewed a memo dated July 14, 2004, referencing the Fiscal Year 2005 Assessment Rate. Mr. Burton stated that the private employer assessment rate has been calculated to be 4.913% (an increase of 35% from last year's assessment of 3.670%). He explained that the cost drivers appear to be §37s, COLAs, and §65s.

The Executive Director reminded Council Members that the September Advisory Council meeting will be held in Lawrence and will focus on Safety issues.

MISCELLANEOUS

The Director of Administration reported on the agency's accounts receivables.

Stop Work Orders - Mr. Tynan explained that the previous audit report had identified several problems within the Stop Work Order System. One of the problems addressed was that the DIA needed a Revenue or Collections Manager. Mr. Tynan stated that the DIA acquired a temporary employee with a revenue and collections background in the fall of 2003. He noted that this person is now working at the DIA on a full-time basis.

Mr. Tynan assured the Council that the DIA is in good shape on the Stop Work Order side of the receivables issue. He explained that the DIA had to review accounts dating back to 1994 and has been able to identify those accounts that have the potential for collection. Mr. Tynan reported that of the 1,500 accounts that were open over the last ten years, they have written off all but 275 during the last six months.

Mr. Tynan reported that he does not expect to collect huge amounts of money from the open accounts. The Director of Administration stated that he anticipates only a 10% collection rate since the accounts date back to mid-1990s. He noted that they are in the process of taking legal action on some accounts, while others are remain with a collection agency. Mr. Tynan assured the Council that he could provide a number every month and track where they are.

Mr. Tynan explained that much of the problems in the past were created when grades were issued to investigators based on the number of Stop Work Orders they issued (not whether a Stop Work Order was viable). Under the new system, the DIA is placing more emphasis on the investigative process rather than focusing on the number of stop work orders issued.

Mr. Tynan stated that during the Democratic National Convention, investigators will be attending training sessions at the Lawrence Training Center. The training sessions will focus on the proper techniques for conducting a thorough investigation.

Ms. Lenihan requested that Mr. Tynan provide the total amount that has been written-off for Stop Work Orders from the Comptroller's Office.

Workers Compensation Trust Fund - Mr. Tynan stated that they have hired an Accounts Receivables Manager to help reconcile the accounts in the Trust Fund. He explained that §65 receivables must be open for 20 years according to the statute. He estimates that there is somewhere between \$75-\$100M in accounts receivables. However, the Director of Administration noted that the DIA has made settlements on many of those accounts.

Mr. Tynan explained that this is a very difficult and more comprehensive project than determining receivables for Stop Work Orders. He noted that the DIA has had to separate the accounts that have settled and put them in different categories. In some case, they still pay out medicals even though they have settled an account. In those accounts they are not going to collect anything, so they are not considered a receivable. Mr. Tynan estimates that the whole process will take at least six months, possibly more. Chairman Jones suggested that when the DIA proceeds through this process, they examine whether any legislative changes could strengthen the process.

Vice-Chairman Byrne asked if the fines could be adjusted. Chairman Jones indicated that the Council had tried to increase the fines through the legislature. He noted that in Florida, a bill has just passed where the fine is a percentage of premium owed. Council Member Banks added that Florida has just conducted a sweep where a sampling of 80 out of 300 companies were found to have no insurance at all.

Mr. Tynan concluded by stating that \$4.2M has been paid out in §65s just this year, whereas total spending for the DIA is around \$75M. The Director of Administration reminded the Advisory Council to put the §65 spending in perspective, as it only represents about 6% of the total payouts for the year.

Chairman Jones adjourned today's meeting at 11:55 a.m.

The next regular meeting of the Advisory Council is scheduled for August 11, 2004 at 9:00 AM, Division of Industrial Accidents, 7th Floor Conference Room, at 600 Washington Street, Boston, MA 02111.