

**MASSACHUSETTS WORKERS' COMPENSATION
ADVISORY COUNCIL MINUTES**

August 6, 2003
Department of Industrial Accidents
600 Washington Street, 7th Floor
Boston, MA 02111

Present: Chairman Thomas M. Jones. CM: Robert Banks; Edmund C. Corcoran, Jr.; Jeanne-Marie Boylan; Ines Leonardo; Alan S. Pierce; Carol Falcone.

Also Present: DIA: Senior Judge Daniel O'Shea; William Taupier, Deputy Director of Administration and EDP; Gregory White, General Counsel; Karen Gibbons (WCRIBM).

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

Absent: CM: Bruce Cochrane; Stephen Sampson; Tony Frias; John Perry; Frank Fanning; Department of Economic Development; Department of Labor and Workforce Development.

Agenda:

DIA Update

Action Items

- Minutes - July 9, 2003

Budget Subcommittee Update

Executive Director Update

Miscellaneous

Chairman Jones conducted today's meeting and proceeded with the topics on the agenda.

DIA UPDATE

Representing the Department of Industrial Accidents at today's meeting was Deputy Director of Administration & EDP William Taupier and General Counsel Greg White.

With the assistance of Mr. Taupier, the Advisory Council was given an update of all monthly statistics in the form of a PowerPoint slide presentation (please see hardcopy attached to minutes).

Judicial Update

Senior Judge Daniel O'Shea updated Council Members with the monthly statistics for Dispute Resolution. Conference Queue: 950; Hearing Queue: 2,643; Reviewing Board Inventory: 125; Impartial Exams: 369 (10 waivers).

A discussion followed with respect to the contracting of Impartial Physicians. According to the Senior Judge, there were 67 orthopedic surgeons under contract one year ago. Currently, there are 76 orthopedic surgeons under contract, which leads the Senior Judge to believe the agency is doing a better job at getting contracts back. The Senior Judge also noted that although many other occupational medicine doctors have applications pending, the DIA is unable to include them on the impartial list until the entire contract process has been completed.

Stop Work Orders (SWO)

Utilizing overhead charts and graphs, Mr. Taupier updated Council Members regarding the status of the Stop Work Orders. Total Investigations for June: 465; Total SWO's Issued: 108; Total Fines Billed: \$16,400; Total Fines Collected: \$38,865.

The Advisory Council asked if the Stop Work Order Pilot Program was still in affect. Gregory White, General Counsel, indicated that the pilot program is now complete and has been implemented within the Office of Investigations.

The General Counsel stated that the agency is seeing a dramatic change in the number of valid SWO's in which the fines will be collected. He noted that the agency had a 10% collection rate on SWO fines in the past, but it would be the goal of the Department to make this rate 100%. Attorney White remarked that he expected to see the amount of collections triple in the near future.

Council Member Falcone requested that the monthly Stop Work Order update include the total amount owed to the agency. Mr. Taupier stated that this information would be included in future presentations.

Council Member Banks asked about the Department's procedure for lifting a Stop Work Order. Specifically, Mr. Banks inquired as to whether a Stop Work Order is lifted after proof of insurance or when the fine has been paid.

The General Council explained that companies must pay the fine. However, Attorney White noted that the agency would no longer be utilizing a collections agency to recover Stop Work Order penalties owed.

Collections would now be done internally, allowing the DIA's attorneys to adjust Stop Work Order fines on a case by case basis to ensure fairness. The General Counsel noted that the Office of Investigations had not utilized their discretion in determining fines in the past, resulting in minimal collections. Attorney White asserted that this Administration's goal was to get the message out to employers that they are required by law to have workers' compensation insurance.

Council Member Banks expressed his concern about the Department's decision to use discretion. He stated that this could leave the agency vulnerable to complaints or lawsuits from companies who might be penalized differently than their competitors.

The General Counsel stated that he had studied the statute and believed it allowed for flexibility to negotiate fines. He further stated that there is nothing in the statute saying that the fine is mandatory.

Chairman Jones stated that he was under the impression that the statute clearly defined the \$100 a day fine as mandatory because it uses the language "shall." The Chairman asked Attorney White if he believed the statute allows for flexibility in determining a fine.

Attorney White asserted that his interpretation of the law allows for the negotiation of fines and that there is no language stating a fine is mandatory. The General Counsel remarked that the agency would ultimately collect more fines than under the previous administration which allowed no room for discretion. Attorney White stated that the DIA would even bring cases into the courts, seeking criminal complaints against employers who intentionally avoided purchasing insurance. The General Counsel explained that the DIA is in the process of educating the District Court Judges so that workers' compensation fraud becomes a priority.

Chairman Jones echoed the concern of Council Member Banks stating the potential problems that could arise from using discretion if applied on an inconsistent basis. The Chairman stated that the most appropriate remedy to ensure fairness might be to change the existing law.

Attorney White explained that enhancing the Stop Work Order system was a work in progress. He informed the Council that the DIA has been working with Director Bob Pozen (Office of Commerce & Labor) in drafting legislation that would address anti-fraud and whistleblower provisions.

Chairman Jones suggested that it would be helpful to have John Zimini at the next meeting to review the results of the Stop Work Order Pilot Program.

Attorney White agreed.

Budget/Personnel Issues

Mr. Taupier addressed Budget and Personnel Issues. There were no positions filled in the month of July. Total DIA Positions Filled as of June 30, 2003: 290.

Number of Claims Filed in July, 2003: 1,479. Number of Claims Filed in July, 2002: 1,653. Number of Claims Filed in Fiscal Year 2003: 17,826. Total Section 37 Claims Filed in Fiscal Year 2003: 284. Total Section 37 Claims Filed in July, 2003: 28. Total Section 37 Claims Filed in July, 2002: 28. Total Section 65 Claims Filed in Fiscal Year 2003: 201. Total Section 65 Claims Filed in July, 2003: 18. Total Section 65 Claims Filed in July 2002: 20.

Council Member Falcone asked that the Advisory Council be provided with monthly statistics regarding the amount that has been paid out on both Section 65 and Section 37 Claims.

Chairman Jones requested that the Advisory Council also be provided with a report on the number of employees who would be utilizing the early retirement package. Specifically, Mr. Jones requested that the agency provide the Council with the positions that will be affected.

Bill Taupier continued with his presentation. Collections for the Public Trust Fund in Fiscal Year 2003: \$2,135,556. Collections for the Special Fund in Fiscal Year 2003: \$29,373,224. Collections for the Private Trust Fund in Fiscal Year 2003: \$42,062,235. Overall Expenditures for the Public Trust Fund as of June 30, 2003: \$2,122,546. Overall Expenditures for the Special Fund as of June 30, 2003: \$15,607,823. Overall Expenditures for the Private Trust Fund as of June 30, 2003: \$47,845,059.

ACTION ITEMS

Chairman Jones asked for a motion to accept the minutes for the Advisory Council meeting on July 9, 2003.

Motion made to accept the minutes of July 9, 2003.

MMS - passed.

BUDGET SUBCOMMITTEE UPDATE

Carol Falcone updated the Council Members on the Budget Subcommittee meeting held on July 31, 2003. Those in attendance were: Chairman Tom Jones, Frank Fanning, Carol Falcone, KrisAnn O'Herron (F&A), Andrew Burton, and Evelyn Flanagan. Ms. Falcone informed Council Members that this year's budget represents only a 1.7% increase from last year's budget. She stated that the DIA's line-item included language that allows for the release of "not more than" \$150,000 for electronic arbitration

services. Ms. Falcone also stated that the line-item stipulates that "not less than \$800,000" be expended for occupational safety training grants. Council Member Falcone explained that it would be up to the administration if this amount increased.

Council Member Falcone stated that the subcommittee was concerned with three main issues: building security, overtime expenses and consultants. Specifically, the subcommittee was concerned that language was not included in the Fiscal Year 2004 budget allowing for the Advisory Council to release funds from the Special Reserve Account to pay for "enhanced security and internal control measures." Ms. Falcone stated that the subcommittee recommend that the DIA make the enhancement of building security a priority and to reinstate the photo-identification policy that requires all staff members to wear ID badges.

The Executive Director stated that he had been informed by the Deputy Commissioner that a Security Task Force would resume meeting on Friday, August 8th. Mr. Burton stated he would keep Council Members informed on the progress of these meetings.

Council Member Falcone also stated that the subcommittee remains concerned with the use of overtime pay in Fiscal Year 2003 and its potential for abuse in Fiscal Year 2004. She stated that the subcommittee strongly believes that overtime should be strictly limited to short-term projects that cannot be conducted in the normal office hours. Ms. Falcone stated that the subcommittee recommends that the DIA develop a strict policy requiring unit managers to submit a written request for their employees to receive overtime. She stated that such requests should explain the necessity for overtime, the expected length of the project, and the employees who would be receiving the overtime pay.

Council Member Falcone also stated that the subcommittee wanted reassurance that the DIA would make every effort not to rely on consultants to do the work that could be done "in-house." Ms. Falcone stated that the reliance on consultants became problematic to the agency in Fiscal Year 1995 when 71 consultants were under contract. She stated that the subcommittee believes that consultants should only be used in situations where a short-term project requires the knowledge or skills that no one else possesses within the agency.

The Executive Director stated that he had been informed by the Deputy Commissioner that the agency intends to hire a business consultant for a 2-3 month period to identify areas of inefficiency or duplicity within each department. The consultant would focus on both the people and the process to ensure that the agency is run efficiently. Mr. Burton reassured the Council that the Deputy Commissioner had informed him that this temporary consultant would in no means take the place of a Director of Administration.

Council Member Falcone concluded by reminding Council Members that the rent for the Boston Office goes up \$10.00 per/square foot next fiscal year. Ms. Falcone stated that this may be problematic for the agency if next year's budget is level-funded.

Chairman Jones thanked Council Member Falcone for her update.

EXECUTIVE DIRECTOR UPDATE

The Executive Director updated Council Members on current issues.

Mr. Burton informed Council Members that on July 24th, Chairman Jones and himself had appeared before the Joint Committee on Commerce and Labor to testify on the four bills that that were endorsed at last Council Meeting. Mr. Burton stated that Evelyn Flanagan had compiled all the testimony from the hearing and was currently rewriting her notes. He stated that a legislative summary of the hearing would be mailed to all Council Members in the next couple of weeks. The Executive Director reported that he had mailed a letter to the Joint Committee on State Administration stating the Council's endorsement of Senate Bill 1705, regarding the suspension/debarment of contractors on public bidding if they fail to secure workers' compensation insurance.

The Executive Director notified the Council that the pending insurance rate decision appears to be in a holding pattern. The Executive Director mentioned that he had spoken with several people and the general consensus was that the Insurance Commissioner will probably not make a decision until the statutory deadline approaches on September 1st.

Mr. Burton gave a brief update on the Oracle Project. He stated that the project originally had a target date for completion of August 15th. The Executive Director explained that it now appears that the project will not be completed until mid-September. The reason for the delay is due to a database conversion. Mr. Burton stated that Oracle has experienced difficulty during this conversion, but when completed, the Oracle system will have less bugs and will allow the DIA more options on what can be done with the data. The Executive Director invited any interested Council Members to attend the next Oracle Subcommittee meeting which is scheduled to be held next Tuesday.

The Executive Director concluded by notifying Council Members that he has tentatively scheduled the Data Processing Office to do a thorough presentation of the Oracle System at the October Advisory Council meeting.

Chairman Jones thanked all those who had participated in today's meeting and asked for a motion to adjourn.

Motion made to adjourn.

MMS - passed.

Meeting adjourned at 11:35 p.m.

The next regular meeting of the Advisory Council: September 10, 2003 at 9:00 AM, Division of Industrial Accidents, 7th Floor Conference Room, at 600 Washington Street, Boston, MA 02111.