

**MASSACHUSETTS WORKERS' COMPENSATION
ADVISORY COUNCIL MINUTES**

April 11, 2001
Department of Industrial Accidents
600 Washington Street, 7th Floor
Boston, MA 02111

Chairman: William H. Carnes

Vice Chairman: Edmund C. Corcoran, Jr.

Present: Chairman: William H. Carnes; Vice Chairman: Edmund C. Corcoran, Jr. CM: Jeanne-Marie Boylan; Robert Banks; Frank Fanning; Richard Lord (Tom Jones); Joseph Tamulis; John Perry; Alan S. Pierce; Carol Falcone; Department of Labor & Workforce Development (Joan Lenihan).

Also Present: DIA: Commissioner Tom Griffin; Jim Hayes; Senior Judge O'Shea; Karen Fabiszewski, Richard Fairbrothers; George S. Sutcliffe (Standard).

Advisory Council Staff: Denise A. Lucciola; Andrew Burton; Ann Helgran.

Absent: CM: Antonio Frias; Stephen Sampson; Bruce Cochrane; Department of Economic Development.

Agenda:

DIA Update

Ann Conway -Tillinghast - Towers Perrin Review of Rate Filing

A. WCRIB

B. SRB

C. Eastern Casualty

Action Items

- Minutes - March 14, 2001

Executive Director Update

Miscellaneous

Chairman Carnes conducted today's meeting and asked Mr. Hayes to proceed with his update.

DIA Update

Mr. Hayes referred to several handouts that he had included in Council Members' packets.

Stop Work Orders

Mr. Hayes reviewed the statistics on stop work orders. Total Investigations for March: 474; Total SWO's Issued: 251; Total Fines Collected: \$36,74.00; Total Fines Billed: \$27,750.00. He noted that investigations for this month were down because there was one investigator in training, one investigator on vacation, and one open investigator position.

Budget

Mr. Hayes informed Council Members that the budget was on track and he could foresee no problems in its enactment.

Personnel Issues

Mr. Hayes then referred to his handout on personnel issues (attached to minutes). Total DIA positions as of March 31, 2001: 299.2 (14 of these positions are Trust Fund positions).

Discussion followed.

Chairman Carnes reviewed each of the various positions listed on the attached handout and asked for clarification regarding personnel assignments.

Council Members had questions regarding the names of personnel who had been promoted and inquired as to if positions would be "back-filled". Mr. Hayes replied that they would not be "back-filled" in the Accounting Unit but other positions would be "backfilled". He also stated that the present Personnel Manager has been promoted and the Trust Fund Manager has been promoted to the Director of Claims.

Commissioner Griffin further stated that a candidate named Jean Riley, now a manager in radiology, would be replacing the former manager of the Health Care Services Board on April 30, 2001. When asked if there would be any more managerial changes he indicated that there might be one or two more changes at the management level.

Mr. Hayes was asked to review the "03" contract list (attached to minutes), and he proceeded to review the list with Council Members. He stated that the dollar amount of the contract is not necessarily the amount that will be expended. Mr. Hayes explained that a dollar amount is put in on the contracts but in

actuality the amount paid is based on the work that the vendor performs. The Commissioner's goal is to eventually eliminate many of the 03 contracts with permanent positions.

Vice Chair Corcoran voiced concern regarding the proposed Senate Bill that would eliminate the Health Care Services Board. The Vice Chairman stated that the Board was a viable part of the agency and asked if the Department anticipated phasing it out of the agency. Commissioner Griffin agreed that it was a viable part of the agency and assured him that it would not be eliminated.

Mr. Hayes then referred to the Chart he had enclosed in Council Members' packets on the number of uninsured injury claims filed under Section 65 (attached to minutes) which shows a significant drop in claims. He then referred to his enclosure that showed companies with more than one section 65 claims (attached to minutes).

Discussion again followed:

Council Members voiced their concern regarding those companies that did not carry insurance. Council Members asked that the Department establish a working relationship with the Fraud Bureau and the Attorney General's Office so they can collectively share and consolidate information.

Mr. Hayes stated that the Department had instituted the "instant stop work orders" which enables an investigator to issue an immediate stop work order. Council Members inquired about the pay without prejudice procedure and Mr. Fairbrothers, Chief Legal Counsel for the Department, stated that over the last several months he had instituted a policy where claims are accepted without prejudice. He continued to give an example of an injured employee whom the Department had spent over \$500,000 for his medical expenses. He further stated that his Department was aggressively attacking the Trust Fund cases by prosecution in criminal and civil actions. He noted that in Fiscal Year 1999, \$3.1 million was spent on section 65 cases and \$1.5 was recovered. In Fiscal Year 2000, \$2 million had been spent and half of that sum had been recovered to date.

Vice Chair Corcoran inquired as to whether or not insurers and self-insurers were utilizing vocational rehabilitation. Mr. Fairbanks replied that it has been utilized in the past, but not as much recently. He hopes to see it used much more in the future. It was again suggested that a small committee be organized to discuss Section 65 issues and employer insurance fraud. It was suggested that members of this committee include the Insurance Fraud Bureau, the Attorney General's Office, and members from the Department of Industrial Accidents. Mr. Fairbanks agreed and stated he would further discuss the possibility of a sub-committee with the Commissioner.

Assessment Audit

Ms. Karen Fabiszewski, Legal Counsel, referred to the handout, which had been submitted to Council Members on the findings of three insurance audits (attached to minutes). She then proceeded to review the material with the Council Members.

Ms. Fabiszewski explained that the first sheet was a summary of the financial findings as reported by Moody, Famiglietti and Andronico. The sheet shows that they have completed one final report at this time involving Arbella, Ins. Their findings determined that Arbella had underpaid the Department in the amount of \$122,229 plus a penalty of \$18,0333. She noted that they had also submitted a preliminary report regarding the American Compensation Insurance Company, which she is now in the process of reviewing. The second sheet of her handout outlined the reports completed by Parent, McLaughlin and Nangle. She noted that the chart shows that Fairfield underpaid the Department by \$201,991 plus a penalty of \$3,217. To date, Fairfield has remitted \$155,487 and owes the DIA \$43,287. Tokio Marine overpaid the Department by \$6,962 and Old Republic overpaid the Department by \$2,133,881. She further noted that Managed Comp is disputing the findings by Parent McLaughlin. She also stated that PriceWaterHouseCooper's report of Travelers remained the same but another company will investigate travelers in the future.

Upon a question raised about the air quality of the Worcester Office, Mr. Hayes stated that the quality of air in the Worcester Region has been corrected and the owner has been cooperative.

Chairman Carnes thanked both Mr. Hayes and Ms. Fabuszewski for their DIA update.

Senior Judge O'Shea updated Council Members on current judicial statistics. Conference Queue: 1,407; Hearing Queue: 1,422; Reviewing Board Inventory: 223; Impartial Exams 3,425 (50 waivers).

He continued to state that a DIA judge had been appointed to the District Court (a total of five judges have moved on) and he felt that this reflects the caliber of judges here at the DIA. He believes that vacancies of judges will be filled by the present administration. There are presently three vacancies: one on the Reviewing Board: one long term; and his previous position.

Chairman Carnes thanked Senior Judge O'Shea for his update.

Ann Conway -Tillinghast - Towers Perrin Review of Rate Filing

Ms. Conway had been contracted by the Advisory Council to review the Workers Compensation Rate Filings. Ms. Conway presented Council Members with a handout. She came before the Council today to inform them as to what their scope would be in covering the rate filing. She will be reviewing the WCRIBM

Filing and will specifically study the prior filing, expenses, classification rates, loss development, trend/law amendments, profit, and other factors of the State Rating Bureau.

Ms. Lucciola inquired if there was a way to do a preliminary report for Commissioner Ruthardt. She stated that Commissioner Ruthardt requested at the Rate Filing Hearing that the Advisory Council take a more active role in the Rate Filing and Panel Discussions. Commissioner Ruthardt asked that the Council have their report to her within one month's time. Commissioner Ruthardt also requested that the Council appoint a sub-committee to approve this report as soon as possible and requested that the Council take a more active role in the rate filing process. Ms. Lucciola noted that currently there are 17 meetings scheduled between today and July 13th that concern the rate filing process. She informed Members that the Advisory Council does not have attorneys on staff to analyze the filings and provide representation for the Council. Ms. Lucciola stated that the WCRIBM and SRB do have such counsel to represent them and conduct cross-examinations, rebuttals, cross rebuttals, etc. of each filing entity.

Vice Chairman Corcoran stated that he had asked the former Executive Director, Matthew Chafe to come before the Council today to give some background information regarding the Commissioner's request. He felt that the Advisory Council has always taken an active advisory role in the Rate Filing, submitted their report and has extended themselves in many areas. As a body, he felt that the Council should respond to the Commissioner's request by letter stating the Council's statutory role in the Rate Setting Process. Chairman Carnes agreed, and noted that the Council's duty was to advise.

Mr. Chafe gave some background information regarding the Rate Filing. He explained that it was a very complicated process. At one time the SRB did not have the funds or actuaries to perform review of the rate filing and relied on the Advisory Council's report. They do have the means now and, therefore, do not have to rely on the Advisory Council. Mr. Chafe indicated that when a report is filed timely by the Advisory Council it did make an impact on the process. Council Member Jones noted that there are two filings before the bureau. The WCRIBM filing is for a 7.7% increase and Eastern Casualty is looking for a July 1st deadline with an 11.6% increase. It was his belief that the Insurance Commissioner was seeking some sort of help in reaching this deadline.

Chairman Carnes stated that the Advisory Council would fulfill their statutory obligation but would not sit on the Commissioner's panel since the Council has no rights to question or rebuttal.

Vice Chairman Corcoran continued to emphasize the necessity of informing Commissioner Ruthardt of the Council's role and position regarding the Rate Filing. He suggested that a letter be sent to the Commissioner noting the Council's position on how they would proceed with the Tillinghast presentation

and report. He suggested that the general tone of the letter should note that the Council would be the player they have always been, but will not be doing anything different for this filing.

Anne Conway, of Tillinghast, continued with her briefing on the scope and design of the report. She suggested that trend and development was a big issue since it was different than what was done in the past. She would try to have something available to present to the Advisory Council by the May 9th meeting and when approved it could be submitted to the Commissioner of Insurance. Tillinghast will not be addressing the Eastern Casualty filing.

Chairman Carnes thanked Ms. Conway for coming before the Council today.

Action Items

Minutes

Chairman Carnes asked for a motion to accept the March 2001 minutes.

Motion made to accept the minutes.

MMS - passed.

Executive Director Update

Executive Director, Denise Lucciola updated the Council. She stated that Representative William Greene was unable to attend the Advisory Council meeting due to his Wednesday hearing schedule. She has scheduled some tentative dates that Rep. Greene would be available to meet for lunch and suggested that Senator Lynch also be invited to the luncheon. She will contact Council Members to arrange a time.

Ms. Lucciola continued to say that on March 21st she testified on the Council's behalf at the Joint Committee on Commerce & Labor's workers' compensation hearing. She included her testimony in Council Members' packets. Council Members Carol Falcone and Alan Pierce attended the hearing and made themselves available for questions from the Committee. The Committee inquired as to what the Council's position was regarding House Bill 777 (comprehensive benefits bill). The Executive Director explained to them that the Council has studied certain benefit level and scarring issues that are components of this proposed legislation. The Council would be willing to meet with the committee to discuss this subject at any time but has no opinion on the bill at this time. She suggested that H.777 be on the agenda next month for discussion.

Ms. Lucciola stated that Senator Lynch did not attend this hearing because he had donated part of his liver to his brother-in-law. She sent him a gift basket from all of the Council Members wishing him and his brother-in-law the best of health and a speedy recovery.

On April 3rd , the Executive Director and Vice Chairman Corcoran attended the Oracle Steering Committee meeting. The project is two to three weeks behind schedule but they have completed the database design of the project. The Project Director informed them that lost time would be recovered over the next few months. Ms. Lucciola thanked Mr. Hayes for his management of the project.

Ms. Lucciola noted that Council Member Banks had asked her to discuss with Council Members House Bill 1161. She included a summary and a copy of this bill in Council Members' packets (attached to minutes). Council Member Banks explained that the proposed bill states that anyone licensed to carry insurance in the Commonwealth of Massachusetts has to pay their fair share of all expenses incurred by the Rating Bureau. Council Member Banks, who sits on the Rating and Inspection Bureau panel, brought it before the Council today for their endorsement.

Council Member Banks made a motion that the Workers' Compensation Advisory Council endorses House Bill 1161.

Chairman Carnes suggested that a phone poll be conducted of all Council Members not present for their vote on House Bill 1161.

MMS - phone poll.

Chairman Carnes thanked Ms. Lucciola for her update.

Meeting adjourned 11:30 a.m.

The next regular meeting of the Advisory Council: May 9, 2001 at 9:00 AM, Division of Industrial Accidents, 7th Floor Conference Room, and 600 Washington Street, Boston, MA 02111.