

**MASSACHUSETTS WORKERS' COMPENSATION
ADVISORY COUNCIL MINUTES**

May 10, 2000
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: Tony Frias (Inez Leonardo); Joseph Tamulis; John Gould (Donald Baldini); Alan S. Pierce; Carol Falcone; Department of Economic Development; Department of Labor & Workforce Development (Joan Lenihan).

Also Present: DIA: Commissioner Campbell; Jim Hayes; Vin Luca; Bob Davis; Richard Fairbrothers; Alexandra St. Onge (WCRIB).

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

Absent: CM: Frank Fanning (proxy); Robert Banks(proxy); Jeanne-Marie Boylan (proxy) John Perry; Bruce Cochrane; Department of Economic Affairs.

Agenda:

Proposed Benefit Level Changes Update - Ann Conway Consulting Actuary, Tillinghast - Towers Perrin

DIA Update

Competitive Rating (Loss Cost) Legislation Update - John Murphy

Legislative Counsel, Liberty Mutual Insurance Group

Action Items

Executive Director Update

Miscellaneous

Chairman Carnes conducted today's meeting.

Tillinghast - Ann Conway

Ann Conway, Consulting Actuary, from Tillinghast provided the Council with an update to her previous study, which had been done in 1997. She stated that she had focused in on (1) what would be the estimated impact of increasing the duration of §35 claims from 260 to 600 weeks and (2) what would be the impact of changing the scarring benefit back to the 1998 reform. She continued her update with talking about each of the topics separately.

In looking at the changing of duration of 65 claims, they used the model which had been created in the past from data obtained from the WCRI. She referred to page 6 of the report she had distributed to Council Members and pointed out the cost impact of changing to the 600 weeks on the 60% replacement rate (which is the current law) and the 66 2/3%. She noted that it would be roughly 18.3% in costs on the 600 weeks on the 60% replacement rate and 22.5% in the increasing of the 600 weeks on the 66 2/3% replacement rate. She further explained that extending durations had a more significant impact on costs than on the §35 claims.

Ms. Conway was unable to locate any data on scarring and felt that the data collection is so insignificant that no one had any data available. One conclusion drawn from this lack of data was that the impact of scarring is relatively minimal. If the assumption that it is relatively minimal, it may be a major process to track it in the future.

Chairman Carnes thanked Ms. Conway for her explanation of the draft report. He noted that Senior Judge Jeenings would not be attending today's meeting and would that he would give the Council a report at next month's meeting.

DIA Update

Stop Work Orders

Mr. Luca reviewed the statistics on stop work orders, which had been included in Council Members' packets. Total Investigations for April: 542; Total SWO's Issued: 183; Fines Collected: \$16,234.00; Total Fines Owed: -\$51,587.00; and Total Fines Billed: \$22,100.00.

Budget

Mr. Luca stated that there had been a transfer for the reconstruction on the 6th floor for a total of \$24,000 and a \$45,000 transfer for the "big buy" computer equipment. He gave the Executive Director the outline of this transfer so that it would be available for Council Members' review.

Chairman Carnes inquired as to who had to approve these various projects and Mr. Luca replied that DLWD had to first approve these projects and then Administration and Finance had to give their approval. Mr. Luca further stated that on May 16th the DIA will begin the assessment process for the year 2001.

Personnel Issues

Mr. Luca continued with his update to Council Members on recent personnel issues. He stated that in April, there had been only one change and that was the position of Deputy Director of Administration & EDP. Total positions as of April 30, 2000: 295.20.

Assessment Audit

Mr. Luca referred to the assessment report. He stated that there had been three completed audits as indicated in the enclosure (attached to minutes). Billings were sent out yesterday for the first completed audits. Seven more insurers have been assigned to be audited. The cost of the DIA's reviews to date: \$91,381 (as shown on the enclosure).

Mr. Luca outlined the "Bar System" which is the automatic collection system by the controller's office. The DIA sends out one bill and if in 30days there is no response, another is sent, it then goes to intercept (in which the Commonwealth stops any money going to an insurer and sends it to the DIA).

When asked about 03 contracts discussed by the Council at last meeting, Mr. Richard Fairbrothers Legal Counsel, responded. He stated that one contracted attorney had been terminated. The two others attorneys: one works on special projects for him, one works on litigation and collection matters in the courts, and Christine Morris who consults with the Commissioner on personnel matters. There is also one recent hired attorney who works part-time and is working on collections for the DIA.

Chairman Carnes thanked Mr. Luca.

MUTTS

Mr. Davis, Executive Director of the Health Care Services Board, updated the Advisory Council regarding the progress of MUTTS. He noted that contractors are in the process of doing system enhancement in the DIA. They have been working on two major projects: the instructions for insurers and the revision of the insurer database. Sometime in February an updated package was sent on the "insurer rollout" to the Attorney General's Office which is still under review and are awaiting approval to send the package. A meeting will be held as soon as the release from the Attorney General's Office is received by the DIA.

Chairman Carnes thanked Mr. Davis for his update.

Competitive Rating (Loss Cost) Legislation Update

John Murphy, Legislative Counsel of Liberty Mutual Insurance Group came before the Council today to ask the support of the Advisory Council in the implementation of legislation for competitive rating in Massachusetts. He reviewed and concerns of the Council and addressed their concerns as stated in 1995 (attached to minutes). He reviewed the bill (attached to minutes) and continued to explain his position regarding the bill and why he felt the change was necessary. It was his belief that the present system which is administrative pricing system (where the state of Massachusetts sets the rates for workers' compensation) becomes very elongated, inefficient and political process. The proposed bill in his opinion would be a simpler system and less political. He continued to outline an explanation of how the loss cost system works (attached to minutes). He noted how Liberty Mutual had been successful in in cooperating such a system with auto insurance. He felt that California entailed a problem when they not only went to competitive rating but at the same time changed the benefit structure. He emphasized the fact that the only thing this proposed bill effects is the rating system between employers and insurers and does not affect benefits. It would eliminate confusion as to what the rates would be at a given time. He stated that 35 states had some form of competitive rating. He said it would simplify the system and companies would be competing on that the Department of Insurance would have continued regulatory over site of the process.

Action Items

Minutes

Chairman Carnes asked for a motion to accept the April minutes.

Motion made to accept the April minutes.

MMS - passed.

Executive Director Update

Executive Director Denise A. Lucciola informed Council Members that the author of the WCRI study that benchmarks 8 states on workers' compensation outcomes will present the key findings at a briefing on Thursday, June 1, 2000. You should be receiving an invitation to the event which will be held at the Sheraton Boson Hotel. We are so pleased to have Alan Pierce representing the Advisory Council along with Don Baldini who will represent AIM and offer additional comments from the Council.

I would like to congratulate Ann Helgran for being a recipient for the Commonwealth citation for outstanding performance for the year 2000. She was 1 of only 3 selected in the entire agency, and we are very proud of her.

Regarding the State Auditor's report on the DIA's administration of its Trust Fund, I met with DIA officials to try to understand how such figures were reported on uncollected fines. From July, 1993 - December, 1997, it was reported that the DIA failed to collect \$4.4 million in fines. However, it was reported to me that one half of those fines have been collected and the remainder is currently under the collection process. Furthermore, the \$17.8 million the reported stated was not collected in potential fines was averaged from the 4,379 stop work orders issued in this time frame that were not penalized. The average fine is around \$4,000 and was multiplied by this number to estimate that \$17.8 million was not properly fined. However, the DIA reports that they were not subject to fines or penalties due to the following:

- the business provided proof of insurance (which accounts for more than ½ of the cases)
- the business was subject to the voluntary market and not in the assigned risk pool
- the business produced unemployment and IRS records proving that they have no employees
- the business never re-opened (this averages for 25-30% of all SWOs issued)

Chairman Carnes then asked for a motion to adjourn.

Motion made to adjourn.

MMS - passed.

J. H. Albert had been commissioned by the Advisory Council to evaluate the effects competitive rating would have on the Massachusetts insurance market. Mr. Licata stated that his report covered a lot of material in a short period of time. He noted that the weight of the evidence was strongly supportive of competitive rating. In the Executive summary of their report he noted the advantages and disadvantages to competitive rating. The J. H. Albert report indicated that competitive rating would ensure the continuation of a healthy workers' compensation market to the benefit of employers and employees. The report recommended that the Commonwealth of Massachusetts adopt a system of competitive rating in which the Commissioner would no longer set rates, but instead, oversee the market to ensure competitiveness.

Mr. Licata highlighted the conclusions of the report for Advisory Council Members. He stated that after contacting the various states, he was surprised at the positive information that they had received, and that

there was very little negative material. He believes that regulation of workers' compensation rates has outlived its usefulness.

Mr. Licata outlined the advantages of competitive rating. He stated that competitive rating would deliver the lowest price to employers and would continue the depopulation of the assigned risk pool. He does not feel that competitive rating will have major effects on small insurance companies since it has not happened in other states, nor does he believe it will have any negative effects on small self-insurers. Self-insurance groups, however, may be effected negatively. The major disadvantage he found is price volatility. Under the current system of administered pricing the Commissioner can cap rates, thereby acting as a stabilizing force on rates. This would be lost under competitive rating.

The Competitive Rating Study recommends that the Commonwealth go from the present administered pricing to a system of competitive rating. J.H. Albert recommended that the Commissioner be involved by ensuring that the market remain competitive. He noted that currently only Massachusetts and eight other states are under administered pricing (70% of the country is now under a system other than administrative pricing). He noted that California went to competitive rating on 1/1/95 and have since had a price war.

Mr. Licata stressed the importance of market information as employers must be educated to shop aggressively. He felt that the assigned risk pool should be self-sustaining, that is eliminating subsidies from the voluntary market. J.H. Albert also looked at House 4047 and made several recommendations in the last section of their report. The report recommends a uniform classification system continue to be used by all insurers. Mr. Licata felt it was necessary to have scheduled rating and that it be allowed up to 25%. He recommended that the law be amended specifically to state that consumer information needed to be provided by the insurance companies. Finally, they recommend the Commissioner be granted broader powers than that provided in the bill so that he/she could regulate the market place if it becomes non-competitive.

Discussion followed Mr. Licata's presentation.

Chairman Sullivan complimented Mr. Licata on the report.

Chairman Sullivan stated he was surprised by the overwhelming positive nature of the report, and asked if there were any negative experiences that could not be qualified. Mr. Licata stated that they looked for negative material, but he could find no more than what was reported.

Chairman Sullivan then asked Mr. Licata to review page 14 of the report and to clarify a statement. Mr. Berman stated that this page would be rewritten. Chairman Sullivan also voiced concern regarding

businesses with less than ten employees. Mr. Licata noted that this represents about less than 3% of the market, and that they would be negatively affected by changes to residual market subsidies.

Commissioner Campbell congratulated Mr. Licata on his report. However, the Commissioner noted that California was not having success with competitive rating, therefore, he would hesitate in recommending it at this time. He suggested that a number of safe guards be put in place prior to adopting competitive rating.

Action Items

Motion made that the report be forwarded to the Joint Commerce and Labor Committee, the Legislature and Executive Offices and be accompanied by a cover letter noting the Council's concerns that the California experience be reviewed, as well as the effects on small employers, that consumer information requirement be included, and that the Commissioner can intervene if necessary. Motion also included that page 14 be rewritten.

MMS - passed

Motion made to accept the September 13th minutes.

MMS – passed

The next regular meeting of the Advisory Council: June 14, 2000 at 9:00 AM, Division of Industrial Accidents, 7th Floor Conference Room, and 600 Washington Street, Boston, MA 02111.