

**MASSACHUSETTS WORKERS' COMPENSATION
ADVISORY COUNCIL MINUTES**

May 9, 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:** Robert Banks; Frank Fanning; Antonio Frias (Inez Leonardo) Stephen Sampson; Richard Lord (Tom Jones); John Perry; Alan S. Pierce; Carol Falcone; Department of Labor & Workforce Development (Joan Lenihan);

Also Present: DIA: Commissioner Tom Griffin; Priscilla J. Conant; Jim Hayes; Senior Judge O'Shea; Karen Fabiszewski; Jerome Shea; Jean Riley; George Sutcliffe.

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

Absent: CM: Jeanne-Marie Boylan; Joseph Tamulis; Bruce Cochrane; Department of Economic Development.

Agenda:

DIA Update

Subcommittee Update

Ann Conway - Tillinghast - Towers Perrin Review of Rate Filing

House Bill 777

Action Items

- Minutes - April, 2001

Executive Director Update

Miscellaneous

Chairman Carnes conducted today's meeting.

DIA Update

Senior Judge O'Shea updated Council Members on current judicial statistics. Conference Queue: 930; Hearing Queue: 1,741; Reviewing Board Inventory: 216; Impartial Exams: 3,869 (63 waivers).

The Senior Judge noted that an increase in the impartial exam fees was under administrative review at this time and that two recall judges had been taken off-line because their terms had expired. He has had discussions and has sent up a packet to the Governor's office regarding the reappointment of judges.

Chairman Carnes suggested that a letter be sent to the Governor on behalf of the two recall judges asking that they be reappointed.

Senior Judge O'Shea continued to state that he has recommended that the nominating panel reconvene.

Chairman Carnes thanked Senior Judge O'Shea for his update and continued with the agenda items. He thanked Mr. Hayes for his participation in past Council meetings and introduced Jerome Shea, the new Director of Administration, who will now be presenting the DIA update.

Mr. Shea told the Chair that it was a pleasure meeting him and that he was looking forward to working with the Council. He then referred to several handouts that had been included in Council Members' packet.

Stop Work Orders

Mr. Shea reviewed the statistics on stop work orders. Total Investigations for April: 735; Total SWO's Issued: 268; Total Fines Collected: \$24,139.00; Total Fines Billed: \$13,050.00.

Budget

Mr. Shea informed Council Members that the budget was on track and that there were no changes. The overall budget had not been increased.

Personnel Issues

Mr. Shea then referred to his handout on personnel issues (attached to minutes). Total DIA positions as of April 30, 2001: 301.2.

Commissioner Griffin introduced Jean Riley, Executive Director of the Health Care Service Board who had filled the discharged Administrator VI position.

Vice Chair Corcoran asked if more staff would be hired for the Investigations Unit. Mr. Hayes stated that they would be hiring more investigators.

Council Member Falcone inquired if there would be any other changes in administration. Commissioner Griffin replied that one more change was possible. Ms. Falcone asked that he again update the Council on this issue at the next meeting.

Assessment Audit

Ms. Karen Fabiszewski, Legal Counsel, referred to the handout, which had been submitted to Council Members. (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 and noted that American Compensation had underpaid \$60,721 in assessments and the fine was calculated to be \$8,605. They have requested the opportunity to calculate the amount owed and will be reviewed by MFA auditing firm for accuracy. This was the only financial information she had to report at this time. Since her last update to the Council, meetings have been held with the two auditing firms to discuss various issues surrounding the audits. It was brought to the Department's attention that the auditing firms are experience difficulty in obtaining information from some insurance firms and it was taking the auditors additional time to obtain information. The DIA is working with the auditing firms to revise the procedure for requesting information from the insurers. There have also been seven preliminary reports that have been submitted to the DIA for review and she will be able to report on these at the next meeting. She is also reviewing and researching how the calculations are made on the assessments of penalties related to the audits. She will have this report at a later date.

Council Members asked why an audit was being conducted if insurance companies did not have to comply. Ms. Karen Fabiszewski implied that the Department was presently researching this issue and that the General Counsel would be involved. The Commissioner has a meeting setup with the Commissioner of Insurance at the end of May.

Chairman Carnes thanked Jerome Shea and Karen Fabiszewski for their reports.

Subcommittee Update

Council Member Banks updated Council Members on the subcommittee's report. He informed Council Members that the subcommittee met with Laura Krauss from the AG's office, the President of the Workers' Compensation Rating and Inspection Bureau of Massachusetts, and members of the DIA. He explained that the meeting was somewhat productive and educational and that the AG's Office is trying to cooperate with the DIA to improve the existing system. At the subcommittee meeting, Ms. Krauss

suggested that a list be published of the people who have been found without workers' compensation insurance. The subcommittee agreed on several legislative issues addressing the employer fines statute, the hiring of more investigators, and how to unify cities and towns in their requirements for workers' compensation when contractors are applying for licenses. They also discussed the increase in criminal prosecution. Council Member Banks concluded by saying that the meeting was good in the respect that they were able to share information, but that there were no real answers. He felt that meetings should be held on a quarterly basis in order to continue to explore a conclusion to the problem.

Chairman Carnes suggested that this issue be brought up in July and to schedule another subcommittee meeting in August. He thanked Council Member Banks for his update.

Ann Conway -Tillinghast - Towers Perrin Review of Rate Filing

Ms. Conway attended today's meeting and distributed a draft analysis report of the WCRIBM Filing with Council Members. She started her presentation by reviewing the Rate Filing and referred to her handout. She indicated that the filing was more streamlined than previous filings, and noted that this year the WCRIBM went along with all decisions made by the Commissioner in 1999. She also stated that Eastern Casualty Insurance was excluded from the filing.

Ms. Conway reviewed the following topics during her presentation:

- Background
- Reconciliation with Prior Filing
- Trend/Law Amendments
- Profit Provision
- Loss Development
- Expenses
- Classification Rates

Discussion followed regarding whether or not to send the Commissioner of Insurance the draft report as she had requested. Both Chairman Carnes and Vice-Chairman Corcoran agreed that since this was a draft report, which could have changes, it would not be advisable to send it to the Commissioner of Insurance at this time. Council Members agreed that they should wait until the report is finalized before sending it to the Commissioner.

Motion made to wait until the report is finalized before sending it to the Commissioner of Insurance.

MMS - passed.

Chairman Carnes suggested a letter be sent to the Commissioner of Insurance informing her as to the Council's position regarding the report and thanked Ms. Conway for her presentation.

House Bill 777

Council Member Pierce came before the Council today to ask for their support on House Bill 777 (comprehensive benefits bill). He stated that the Plaintiff Bar, the AFL-CIO, the Mass Medical Society, and the Coalition for Injured Workers are all in support the bill.

Council Member Pierce began his presentation by informing Council Members that this bill supports the interests of workers who is injured on the job. Mr. Pierce stated that this bill would address the present difficulty of these injured workers in getting access to medical care. He proceeded to give background information on the prior statute of 1991 and the changes that had occurred in the reduction of workers' compensation costs since the revision of the law.

Council Member Pierce stated that there were 10 sections of the bill and 3 sections (7,8,9) deal with benefits (summary of bill attached) which he proceeded to address. He informed Council Members that at the Joint Committee on Commerce & Labor hearing the Committee inquired as to what the Council's position would be in regard to House Bill 777.

Council Member Pierce offered the following motion for any Council member to introduce:

"That the Workers' Compensation Advisory Council, being a body comprised of 5 labor and 5 management voting members, is unable to reach a 7 vote consensus concerning House bill 777. The Council, however, does wish to state that issues concerning access to adequate medical care and what constitutes a fair level of disability benefits to injured workers are of concern. The Council therefore urges the legislature to balance these issues and the need for fair and competitive premiums for the Commonwealth employers."

Council Members discussed the pros and cons of House Bill 777, the impact the changes would have on insurers and employers, and the benefits it would entail for injured workers. They also discussed the implications of Council Member Pierce's motion. Council Members could not come to a consensus. Chairman Carnes mentioned that a luncheon would be held with the chairs of the Commerce & Labor Committee tomorrow and those Council Members could discuss their views with them at that time.

Council Member Perry made a motion that the Advisory Council endorses the statement offered by Council Member Pierce regarding House Bill 777.

MMS - did not pass.

Action Items

Minutes

Chairman Carnes asked for a motion to accept the April 2001 minutes. Motion made to accept the minutes.

MMS - passed.

Executive Director Update

Executive Director, Denise Lucciola updated the Council and referred to handouts she had enclosed in Council Members' packets. She mentioned the loss of Tony Frias' sister and that a sympathy basket from the members would be arriving today. Her first enclosure referred to Council Members' e-mail addresses, which she asked that they fill out a survey she created and return it to her. Ms. Lucciola also referred to her handout on the DIA's budget and noted that House recommended \$18,642,473 (\$300 less than the Governor's Recommendation). Furthermore, the House Budget is \$825,587 less than the DIA had originally requested. She will keep Council updated on this issue.

Ms. Lucciola further stated that the Oracle conversion is running later than expected but Phase-2 will begin soon.

Ms. Lucciola reminded Council Members that the luncheon with Representative Greene and Senator Lynch would be held at 1:00 p.m. at the Black Goose on Thursday.

Miscellaneous

Chairman Carnes again stated that a letter would be sent to Governor Swift on behalf of the recall judges and that a gift basket would also be sent to the Governor in the hospital.

Motion made to adjourn.

MMS - passed. Meeting adjourned 11.45 a.m.

The next regular meeting of the Advisory Council: June 13, 2001 at 9:00 AM, Division of Industrial Accidents, 7th Floor Conference Room, and 600 Washington Street, Boston, MA 02111.

