

**MASSACHUSETTS WORKERS' COMPENSATION  
ADVISORY COUNCIL MINUTES**

July 10, 2002  
Department of Industrial Accidents  
600 Washington Street, 7<sup>th</sup> Floor  
Boston, MA 02111

**Present:** Chairman William H. Carnes; Vice Chairman Edmund C. Corcoran, Jr. CM: Antonio Frias (Inez Leonardo); Richard Lord (Tom Jones); Frank Fanning; Alan S. Pierce; Carol Falcone; Department of Labor & Workforce Development (Joan Lenihan); Department of Economic Development (Robert Matthews).

**Also Present:** DIA: Commissioner Thomas J. Griffin; Deputy Commissioner Priscilla J. Conant; Senior Judge Dan O'Shea; Jerome Shea, Director of Administration; Jim Hayes, First Deputy Director of Administration; Paul Griffin, DIA Legal Counsel; Karen Fabiszewski, Assistant General Counsel; Mr. John Zimini, Director of Investigations.

**Guest:** Ann Conway, Tillinghast - Towers Perrin.

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

**Absent:** CM: Robert Banks; Jeanne-Marie Boylan; Bruce Cochrane; John Perry; Stephen Sampson.

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**Agenda:**

DIA Update

- Investigations - John Zimini
- Assessment Audit - Karen Fabiszewski
- Assessment Rates - Ann Conway
- Impartial Medical Rates - Council Member Tom Jones
- Vocational Rehabilitation - Council Member Carol Falcone

## Action Items

Minutes - June, 2002

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: 1,809; Hearing Queue: 1,932; Reviewing Board Inventory: 122; Impartial Exams: 4,584 (87 waivers).

### **Stop Work Orders**

Mr. Shea updated Council Members on the stop work orders statistics. Total Investigations for June: 886; Total SWO's Issued: 266; Total Fines Collected: 53,426.00; Total Fines Billed: \$30,300.00.

Mr. John Zimini came before the Council today to update Council Members on the investigations of repeated offenders. He stated that a search was done of the DIA's computer database, and since the last report to the Council, there has been no Trust Fund

repeat offenders. He further explained that information had been compiled from the Insurance Industry, Department of Employment and Training and the Secretary of State's Office in order to identify the multiple stop work orders. Of the 132 companies that had been identified since the inception of the Department's computer system, approximately 17 companies were fined as a result of stop work orders issued. When asked as to the status of these 17 companies, Mr. Zimini replied that some are in collections and others are pending litigation.

### **Budget**

Mr. Hayes continued with an update to Council Members regarding the status of the budget. He informed Council Members that there was presently no change and that the DIA had not received the Budget. Mr. Hayes stated that they would review the fiscal year 2004 spending plan at the end of August. Mr. Hayes suggested that a meeting be arranged with the budget subcommittee after the next Council meeting.

## Personnel Issues

Mr. Shea addressed the personnel statistics. As of June 30, 2002 the total DIA positions filled was 289. There was one new hire and one resignation for the month.

## Assessment Audit

Ms. Karen Fabiszewski updated and distributed a handout (attached to minutes) that she reviewed with Council Members. She noted that Eastern Casualty since her last report to the Council has remitted \$72,992 bringing up their total remittance to \$903,294. She then continued to review the remainder of the Moddy, Famiglietti & Andronico's report.

Ms Fabiszewski also continued to review the Parent, McLaughlin & Nangle report (attached to minutes). She informed Council Members that insurance companies are audited according to a list that was generated at the beginning of the review process.

Companies are periodically added to the list, and are chosen for review at random. Of the 182 companies on the list, 72 are currently under review. Question was raised regarding the need for litigation against Eastern Casualty. Mr. Griffin, DIA Legal Counsel, explained that there had been a productive meeting with Eastern Casualty and it was decided that the best course of action at this time was for Eastern Casualty to go back and re-bill their customers. After this has been done, the DIA will meet with them again.

Mr. Griffin was asked how money would be collected from those companies who have not paid. Mr. Griffin indicated that there maybe cases that will head for litigation if a solution can not be found for obtaining their remittance. Chairman Carnes thanked the members of the Department for their update, and proceeded with the next order of business.

## Assessment rates - Ann Conway

Ann Conway of Tillinghast came before the Council today to review with members of the Council the revised analysis of the DIA's fiscal year 2003 assessment rates. Ms. Conway distributed Tillinghast's report to all those present (attached to minutes).

She reviewed the report in detail and followed her handout. Ms. Conway explained that the report detailed the estimated amount required by the special fund and trust funds for fiscal year 2003. She explained the steps used in the report that determined the assessment rates for both the private and the public employers. She also reviewed the assessment rates that would be applied to public and private employer insurance premiums as outlined in the report.

Ms. Conway concluded her discussion stating that the private employer assessment rate had been calculated to be 4.488% of standard premium. The public employer assessment rate had been calculated to be 39.851% of standard premium.

A memorandum outlining the Assessment Rates and the Tillinghast Report (attached to minutes) was included in Council Members' packets. The memorandum explained the breakdown of the assessment rate process as reported in the Tillinghast report. Chairman Carnes thanked Ms. Conway.

Vice Chairman Corcoran addressed the Senior Judge and inquired as to whether or not he had had any responses regarding his memorandum on decisions outstanding. The Senior Judge replied that all judges had responded but one. When asked about judicial appointments, he explained that there was nothing to report at this time.

Council Member Pierce requested that Judge Fischel be recognized for her outstanding dedication in completing her caseload since retiring. He asked that it be on record that she did this on her own time, without pay, and saved insurers and employees a lot of time and stress. Council Members agreed to send a letter of recognition.

#### Impartial Medical Rates

Council Member Jones addressed the Council today to petition members for their support in an increase in the Section 11A Impartial Reimbursement Rates. Council Member Jones presented what he considered a possible remedy for resolving the issue of appropriate reimbursement for impartial medical exams.

Council Member Jones stated that under Chapter 30A, §4 of the Massachusetts General Laws in the State Administrative Procedures Act states: "any interested person may petition an agency requesting the adoption, amendment or repeal of any regulation, and may accompany his petition with such data, views and arguments as he thinks pertinent and that each agency shall prescribe by regulation the procedure for the submission, consideration and disposition of such petitions." He further continued to discuss this option with Council Members and believed that it would be a viable option. Council Member Jones suggested that data be gathered to support an increase in the impartial medical exam fees.

Discussion followed. Various solutions to the problem were explored which included allowing a judge to make the decision of whether or not an impartial examination was warranted. In conclusion, Council Members agreed that it was necessary to review the fee structure but that the Council was not the best vehicle to support such a petition. It was decided, however, that Council Members could individually petition such support from the segments of the population that they represented.

Chairman Carnes and Vice Chair Corcoran suggested that a meeting be arranged with a representative of Administration & Finance and that a follow-up letter be sent regarding this issue.

### Vocational Rehabilitation - Council Member Carol Falcone

Council Member Falcone informed Council Members that a meeting had been held with the Director of OEVR and Jim Hayes in June. In her update, Council Member Falcone stated that the Department was compiling data on the percentage of injured workers that are being determined not suitable and the rationale for this determination. She also noted that process was being made and that Form 121 will be pursued which will make early referrals into OEVR. A pilot test program will be implemented to see how this will impact the OEVR staff in August. Council Member Falcone continued to say that Mr. Hayes has been very involved and cooperative in the process. The next scheduled meeting will be held at the end of August.

Chairman Carnes thanked Council Member Falcone for her update.

### **Action Items**

Chairman Carnes asked for a motion to accept the June 2002 minutes.

Motion made to accept the minutes.

MMS - passed.

### **Executive Director Update**

Executive Director, Denise Lucciola, updated the Council regarding the legislative budget. She stated that the conference committee was still convening at this time and that she will keep the Council informed on their progress.

Ms. Lucciola informed Council Members that she and Vice Chairman Corcoran had attended a WCRI CompScope™ meeting. She stated that the discussion focused on pilots to add measures for worker-reported outcomes and litigation, and interim studies.

They will issue a final report in the near future. Vice Chair Corcoran noted that Dr. Richard Victor, Executive Director of the WCRI, presented a detailed study of what medical fee structures are in other states and believes he will be contacting Commerce and Labor regarding this issue.

Ms. Lucciola continued to update Council Members on legislation. She stated that House Bill 4348, relative to providing workers' compensation coverage for sole proprietors and partnerships was enacted in the House on July 1st and is awaiting Senate enactment. She then referred to the letter included in Council Members' packet regarding Senate Bill 2358. She noted that as of June 20th the bill had been referred to Senate Ways and Means but there has been no activity since that time.

Ms. Lucciola concluded by saying that she would contact Members to remind them of the DIA's budget subcommittee to be held next month.

### **Miscellaneous**

Council Member Pierce referred to a letter from GFT USA Corp. that he had received regarding the status of the DIA and asked if the Council had received a copy and whether or not the Council intended to reply to the inquiry. Council Members agreed that the Advisory Council is mandated by statute not to get involved with individual workers' compensation cases.

Chairman Carnes asked for a motion to adjourn.

Motion made to adjourn.

Meeting adjourned 11:30 a.m.

**The next regular meeting of the Advisory Council: August 14, 2002 at 9:00 AM, Division of Industrial Accidents, 7th Floor Conference Room, at 600 Washington Street, Boston, MA 02111.**