

**MASSACHUSETTS WORKERS' COMPENSATION
ADVISORY COUNCIL MINUTES**

July 12, 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; Frank Fanning; Robert Banks; John Perry; John Gould (Donald Baldini); Jeanne-Marie Boylan; Alan S. Pierce; Carol Falcone; Department of Labor & Workforce Development (Joan Lenihan).

Also Present: DIA: Commissioner Campbell; Vin Luca; Bob Davis; Jim Hayes; Alexandra St. Onge (WCRIB); Suzanne Bump (AIA) Advisory Council Staff: Denise A. Lucciola; Andrew Burton; Ann Helgran.

Absent: CM: Bruce Cochrane; Department of Economic Development.

Agenda:

DIA Update

Loss Cost Legislation - Ed Donahue, Attorney, Morrisey, Mahoney & Miller and

Representative for the Trade Association of Independent Property Casualty Insurers.

Action Items

- Minutes - June, 2000

Executive Director Update

Tillinghast Final Report

Miscellaneous

Chairman Carnes conducted today's meeting.

DIA Update

Senior Judge Jennings left the DIA on June 30th and Mr. Luca updated Council Members on the judicial statistics for June. Although he was not prepared today to give a detailed summary, he noted that there were less cases in the queue this month than in last month's report. He stated that the Reviewing Board, under "other inventory," was 114; with a total of 249, and cases not ready for panel assignment; 95. The Conference queue was 2,034, and that the Hearing queue was 2,203. All of the judges who had been off-line are now on-line. At the request of Vice Chair Corcoran, Mr. Luca agreed to work with the Executive Director to further examine judicial statistics.

Stop Work Orders

Mr. Luca reviewed the statistics on stop work orders, which had been included in Council Members' packets. Total Investigations for June: 541; Total SWO's Issued: 133; Fines Collected: \$34,967.00; Total Fines Owed: \$85,584.00; and Total Fines Billed: \$4,500.00. He noted that the Investigations Unit had been down three investigators and the positions were in the process of being filled.

Budgetary Matters

Mr. Luca informed Council Members that the budget has yet to be passed. He also stated that the assessment rate has decreased. He explained that the funding for the conversion of the Unify database to Oracle is going to the Conference Committee. It has passed in both Houses, and will be signed when it comes out of Conference. The DIA is prepared to make the conversion as soon as the budget is approved. They are also in the process of updating their forms to be compatible with electronic filing.

Personnel Issues

Mr. Luca continued with his update to Council Members on recent personnel issues. He stated that in June, there had been 5 personnel changes (attached to minutes). Total DIA positions as of June 30, 2000: 290.4.

Assessment Audit

The assessment audits are at the same status as reported last month with four or five ongoing audits. The Price Waterhouse Cooper's audit of Travelers Insurance Company is currently being completed.

Action Items

Minutes

Chairman Carnes asked for a motion to accept the June 2000 minutes.

Motion made to accept the June 2000 minutes.

MMS - passed.

Executive Director Update

Executive Director, Denise A. Lucciola informed Council Members that she and Carol Falcone will meet with the Director of OEVR and certified providers on July 17th regarding the Office of Vocational Rehab. They will continue to develop a plan to address the legislative concerns and will update the Council on their progress.

Ms. Lucciola referred to "A Guide to Workers' Compensation Practice and the Workers' Compensation Trust Fund" that she had obtained from a seminar which was attended by her and Andrew Burton on July 11, 2000. The Executive Director noted a concern she had with §24 regarding an employee's right to opt-out of the workers' compensation system. Mr. Luca stated that any-opt out information could be obtained from Joan Endres in Finance and Accounting. Ms. Lucciola stated that if any Council Member were interested in this guide, she would obtain a copy for them.

Ms. Lucciola referred to the enclosed articles on workers' compensation in Council Members' packets and noted one particular article. The Journal of Workers' Compensation had published an article discussing the Massachusetts Impartial Medical Exams written by Council Member Alan Pierce. The Executive Director referred to the final version of Tillinghast's analysis on benefit levels and scarring that had been enclosed in Council Members' packets. She reminded Council Members that the Legislature has requested that the Council take a position on scarring and benefit levels and asked if the Council would like to send the report to them.

Subcommittee on Proposed Benefit Level Changes Update

Chairman Carnes noted that a subcommittee had been established in response to the Legislature's request for the Council's opinion on the §36 scarring legislation. He stated that the Tillinghast report analyzed the proposed changes and that the Council needed to respond to the Commerce & Labor Committee.

Discussion followed. Members of the subcommittee addressed the Council and stated their various opinions regarding the cost of the proposed changes as analyzed in the Tillinghast report. It was suggested that the report be sent to the Commerce and Labor Committee even though the legislation is currently before the Senate Ways and Means Committee. It was also suggested that a memo be attached stating that the Council was unable to reach a consensus in taking a position in favor or opposed. Council Members agreed to send the final Tillinghast report to Commerce and Labor. If future debate is necessary

on the pros and cons of the report it was suggested that this topic could be added as an agenda item at a later meeting.

Motion made to send the Tillinghast report to the Commerce and Labor Committee.

MMS - passed.

Loss Cost Legislation

Chairman Carnes informed Council Members that a subcommittee had been formed to review the Loss Cost (competitive rating) legislation that had been previously distributed to Council Members at the last meeting.

Council Member Baldini, a member of the subcommittee to review the competitive rating bill, updated the Council Members of their findings. He stated that a lengthy discussion was held regarding the proposal to replace the current administrative pricing system in Massachusetts. The subcommittee reviewed the competitive rating study commissioned by the Council and completed by J.H. Albert in 1995. He referred to the letter written on October 17, 1995 outlining the Council's concerns (attached to minutes). He noted that the subcommittee reviewed these concerns and questioned pool subsidization which was not included in the prior legislation. The prior bill had a provision that the assigned risk pool would no longer be subsidized and would stand on its own. This provision had previously concerned Council Members in 1995. Mr. Baldini stated that the current legislation, however, would not change that the pool be subsidized. In regard to the issue of the Commissioner of Insurance not having the ability to reassert herself into the market if necessary, members of the insurance industry have assured Council Members that the current bill allows for this provision.

In conclusion, Mr. Baldini stated that it was his recommendation that the Council take the same position as it took in October 1995 (attached to minutes). The position was that the Advisory Council endorsed the concept of the competitive rating bill if the Council's outlined concerns were fully addressed by the legislature, and that subsidization to the residual market not be included in the bill. When asked about her opinion of H.579 as proposed, Council Member Falcone felt there were enough safeguards to support the replacement of the current rate setting process in Massachusetts. She noted that thirtyfive states currently have competitive rating systems. Ms. Falcone stated that Mr. Donahue was asked to come to today's meeting to explain what the impact on small insurers would be if the rate setting process was changed to a competitive rating system.

Chairman Carnes thanked the subcommittee members and introduced Mr. Ed. Donahue.

Ed Donahue, Attorney at Morrisey, Mahoney & Miller and Representative for the Trade Association of Independent Property Casualty Insurers, came before the Council today at the request of Council Members to represent small insurers. He stated that of his group of insurers (16 small insurance companies), five write primarily in the workers' compensation market. Mr. Donahue explained that small insurer's major concern was the issue of predatory pricing, where larger companies might under price smaller companies and drive them out of the workers' compensation market. However, a number of things have occurred that have softened the position of his group on competitive rating.

First, the history of this kind of rating system in other states hasn't proven their original fear to materialize. Studies have proven that smaller focused and efficient companies did well under a competitive rating system. Secondly, the present rating system is extremely political and difficult to work within. Therefore, the smaller insurer companies "would rather take their chances in the market place rather than with the regulator" because the system that is in place creates a diversion of interest in the political and practical sense.

Mr. Donahue was of the opinion that the current political system has problems, and that his insurance groups would rather change to competitive rating then keep the present system. Mr. Donahue further stated that the bill does allow for the Commissioner to have tremendous control in setting the base line on determining loss and the approval of rates. He stated that his group of insurers are conformable with this bill because it will continue to be a regulated system but not an administrative system.

Discussion followed with those present mentioning the pros and cons of the conversion to a competitive rating system from the perspective of their interests (insurers, self-insurers, labor, businesses, etc.). It was agreed that the Council could support the bill if the safe guards that were suggested were put in place.

Chairman Carnes thanked Mr. Donahue for his input and asked for a motion regarding the proposed amendment to House Bill 579.

Motion made to support the amendment as proposed.

MMS - did not pass.

Motion made to send a copy of the 1995 J.H. Albert report on competitive rating with a cover letter to Senator Lynch and Representative Larkin. The cover letter would state that the Council had reviewed the proposed amendment to Loss Cost Legislation and would outline the Council's concerns (letter similar to the October 17, 1995 letter attached to minutes). The letter would further state that the Council would endorse the concept of the bill, providing the Legislature would address their concerns, and with the

understanding that the wording of ceasing subsidization to the residual market was no longer included in the bill.

MMS - passed.

Miscellaneous

Chairman Carnes asked the Executive Director to follow-up on an update regarding judicial appointments.

Chairman Carnes then asked for a motion to adjourn.

Motion made to adjourn.

MMS - passed. Meeting adjourned 11:15 a.m .

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