

**MASSACHUSETTS WORKERS' COMPENSATION
ADVISORY COUNCIL MINUTES**

September 8, 1999
Department of Industrial Accidents
600 Washington Street, 7th Floor
Boston, MA 02111

Chairman: William H. Carnes

Vice Chairman: Edmund C. Corcoran, Jr.

Present: Vice Chair Edmund C. Corcoran, Jr.

CM: Tony Frias (Inez Leonardo); Larry Morrisroe; John Perry; Frank Fanning; John Gould (Donald Baldini); Joseph Tamulis; Carol Falcone; Alan S. Pierce; Department of Labor & Workforce Development (Janice Tatarka).

Also Present: DIA: Commissioner Campbell; Vinny Luca; Dino Theodore; Tom Griffin; Jim Hayes; Bob Davis; Alexandra St. Onge (WCRIB); Suzanne Bump (American Insurance Association); John Murphy (Liberty Mutual); Herbert O. Edmunds (TEquipment); Judd Pierce (Alan Pierce & Associates).

Staff: Denise A. Lucciola; Ann Helgran.

Absent: Chairman William H. Carnes (proxy). CM: Jeanne-Marie Boylan (proxy); Robert Banks (proxy); Department of Economic Affairs; Bruce Cochrane.

Agenda:

DIA Update

Insurance Industry Concerns Regarding MUTTS

Guest Speaker: Suzanne M. Bump, Assistant Vice President, AIA

John P. Murphy, Legislative Counsel, Liberty Mutual Insurance, was available for questions from the Council.

Action Items

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Discussion of DIA Budget Figure

MUTTS Report to Legislature

Executive Director Update

Miscellaneous

Vice Chair Corcoran conducted today's meeting.

DIA Update

Senior Judge Jennings updated Council Members. Conference queue for June: 1,882, for July: 1,894 and as of this week: 1,755. Hearing queue for June: 1,401 for July: 1,354 and now: 1,418. The Reviewing Board inventory is under 300. Impartial exams information is not available. There is no Section 37 inventory. Senior Judge Jennings stated that he is down 20% of his judges (out of 22 judges four are not taking caseloads). To maintain standards and timeframes he would need approximately 25 judges. He also expressed concern that present judges would be taken off-line when their term expires next year.

Vice Chair Corcoran shared Senior Jennings' concerns regarding the need for judges. He will discuss the situation with Chairman Carnes to see if another letter could be directed to the Governor.

Vice Chair Corcoran thanked Senior Judge Jennings for his input.

Stop Work Orders

Mr. Luca reviewed the statistics on stop work orders, which had been included in Council Members' packets. August Total Investigations 484; Total SWO's Issued: 109; Fines Collected: \$17,574.00; Total Fines Owed: \$37,990.00; and Total Fines Billed: \$12,050.00.

Personnel Issues

Mr. Luca continued with his update to Council Members on recent personnel issues. In August, there were 2 new hires and 5 promotions. Total DIA positions filled as of August, 1999: 300.20 (attached to minutes).

Budget

Mr. Luca continued to update Council Members on the Budget. Fiscal Year 1999 budget expenditures were \$17,253,868 (97%). The unexpended expenditures were due to positions that had not been filled. The DIA's Budget for fiscal year 2000 is the same as the Governor's recommendation of \$18,142,031.

Assessment Audit

Mr. Luca explained that a final draft report had been done and discussed yesterday with the auditors. A total of \$158,694.21 has been collected to date in assessments.

Vice Chair Corcoran thanked Mr. Luca.

Update on Progress of MUTTS

Bob Davis, Executive Director of the Health Care Services Board, updated Council Members. He is continuing to work internally on the MUTTS contract. They are presently focusing on privacy issues and are defining the deliverables from the end of the fiscal year. They are also finalizing the coding requirements with CHER.

Vice Chair Corcoran asked if there would be any delay in the project dates for the project. Mr. Davis does not anticipate any delay, and expects the first quarter reporting will be completed sometime in the Fall. Mr. Davis stated that there are no plans for another ILC meeting before the first of the year. In the immediate future, a general notice to all insurers will be sent out to participate in the MUTTS program. The draft of the letter of invitation includes estimated dates of participation. The DIA's plan is to divide the required reporting data in four levels i.e. threshold level, measurable, meaningful, and useful data for MUTTS.

Vice Chair Corcoran thanked Mr. Davis and introduced Dino Theodore the DIA General Counsel.

Mr. Theodore came before the Council to discuss the legal issues involved in the MUTTS program. He felt that there could be some information requested by the Advisory Council that could raise concern regarding privacy issues. Mr. Theodore contacted the Attorney General's Office and a point person was assigned to determine whether the information requested could be released to the Council without jeopardizing the project. Since that time, the DIA has received an executive order from the Governor's office with respect to privacy in general. Prior to receiving this information, Mr. Theodore was in the process of putting together information that would address information brought into the MUTTS project and any general information received by the Department. He has given the Executive Director the information she requested which was included in the report to the Legislature.

Vice Chair Corcoran explained that the information requested by the Council was basic information and not meant to be of a confidential nature. He further explained that it was not the intention of the Council to get in-depth information, but only basic information so the Council would have an understanding of MUTTS. The legislature had asked for a progress report on MUTTS and the Council was trying to give them this information.

Commissioner Campbell stated that the issues of confidentiality and privacy were a major concern. He provided the Vice Chair and Executive Director with a copy of the Internal Procedures of the DIA. He continued to say that Massachusetts has had five double-digit decreases in a row and that other states were facing major increases in workers' compensation rates.

Vice Chair Corcoran referred to "The Second Annual Workers' Compensation Conference which will be held in Rhode Island on October 24-26, 1999 (attached to minutes), and thanked the Commissioner for his input.

Insurance Industry Concerns Regarding MUTTS

Vice Chair Corcoran introduced guest speaker Suzanne M. Bump, Assistant Vice President, AIA and John P. Murphy, Legislative Counsel, of Liberty Mutual Insurance.

Ms. Bump referred to the letter she had sent to the Executive Director dated July 22, 1999, which summarized AIA member companies opposition the continuation of MUTTS.

She explained that in 1992 when MUTTS was first introduced, they had certain reservations regarding the program. As stated in her letter, the AIA member companies questioned the statutory authority of the DIA, and noted that a system was already in place with the IAIABC to identify necessary data elements and devise standardized formats for data interchange. She was of the opinion that Massachusetts would be better served to participate in the industry's wide effort that was underway with the IAIABC. Ms. Bump also noted that there has also been concerns regarding the sharing of their data with the general public and anyone who would want to review the data on how to address claims. They were concerned that once the data was given to a State agency the information would become public information and could be reviewed by anyone, including competitors. Another concern was their mandate to ensure that they will be Y2K compliant and the necessity of putting this aside for the collection of data for MUTTS. Ms. Bump's members also questioned whether the results would justify the effort and expense on the industry and what the actual benefit to be derived from MUTTS.

Ms. Bump concluded by discussing the expectations of MUTTS and the drawbacks of these assumptions. She outlined the basic theories of the program and why they were not feasible.

- One basis of the MUTTS program would be to determine what the most frequent injures were and the cost associated with them. She indicated that the Rate Setting Commission has already collected this information for years. It was also indicated that the MUTTS program would be able to determine what medical providers were over treating. She noted that this information is presently being done by the HCSB.

- Another rational given for the MUTTS program was for protocol development, and this is presently being done by the medical community.

- The return to work status, that was supposed to be determined by the MUTTS program, was probably not possible because of insufficient information.

Ms. Bump stated that for all of the stated reasons, AIA member companies opposed the continuation of MUTTS. She thanked the Council for allowing her come before the Council to express their position on MUTTS

Commissioner Campbell

Commission Campbell addressed Council Members. He noted that it was necessary to go back to the basic premise in which MUTTS was a component of the medical reform law. He noted that he consulted with a group of professionals at the Harvard School of Public Health. At this meeting, they addressed the treatment of injured workers and the effect that workers compensation had on the economy. An overall plan was developed to comply with the medical component of the reform law. The initial part was UR and this was mandated by legislation. He stated that many of the medical protocols were directed at work place injuries and have been successful. He believes that injured workers are receiving better treatment and better access at a competitive cost because of the plan. When asked why data could not be obtained from other State Agencies, the commissioner replied that it was not readily available. He noted that a plan was developed to put a medical component together that would insure that injured workers would receive quality treatment at a competitive cost and to collect information. MUTTS is the fourth component of the medical plan.

Vice Chair Corcoran recognized John P. Murphy, Legislative Counsel of Liberty Mutual Insurance.

Mr. Murphy noted that he did not want to retract from Suzanne Bumps presentation but from a carrier's perspective Liberty Mutual has been reluctant to be involved in the MUTTS program. While they applaud the work that has been done to bring the Massachusetts workers' compensation under control, they do not share the belief that MUTTS is necessary. They also believe there are issues with privacy (privacy with the individual claimant data information and propriety data that helps to make them competitive).

They do not believe that the DIA can adequately protect whatever data it receives from disclosure. They strongly oppose any efforts to obtain this information and do not agree on the efficacy of the MUTTS program.

Ms. Bump and Mr. Murphy were asked if they had received an invitational letter from the Department and if they would resist a mandate from the Department. The response was that if there were an invitation letter with an option to join, they would not. If it were a mandated letter, they would have to evaluate their options.

Vice Chair Corcoran noted that the initial guidelines established by the HCSB and the subsequent ones established recently, have worked very well and had made a big difference in medical treatment plans for injured employees.

Vice Chair Corcoran thanked both Ms. Bump and Mr. Murphy for their participation.

Action Items

Vice Chair Corcoran asked if Council Member Pierce wanted to establish the dates for the subcommittee meetings on Legislation. Council Member Pierce stated that he would confirm the dates with the Executive Director.

Minutes

Vice Chair Corcoran asked for a motion to accept the August minutes.

Motion made to accept the August minutes.

MMS - passed.

DIA Budget Figure

Vice Chair Corcoran then referred to the DIA Budget Figure.

Mr. Luca stated that the budget had been finalized and the DIA would proceed with the lowest number of three, which would be the Governor's figure of \$18,142,031.

Vice Chair Corcoran asked for a motion to act on the DIA's fiscal year 2000 budget of \$18,142,031.

MMS - passed

MUTTS Report to Legislature

Vice Chair Corcoran referred to a report dated of September 8, 1999, addressed to Chairman Stephen F. Lynch and Chairman Peter J. Larkin of the Joint Committee on Commerce and Labor, which had been included in Council Members' packet.

Vice Chair Corcoran asked for a motion to send the report.

MMS - passed.

Executive Director Update

Executive Director Denise Lucciola updated Council Members. She noted that on August 24, Commissioner Ruthardt issued a final workers' comp. insurance rate decision for a decrease of 20.3% from last year's rates which is the same as the number Tillinghast derived for the State Rating Bureau. Ms. Lucciola referred to her memo dated August 24th with explained the effect of the decrease (attached to minutes).

Ms. Lucciola stated that there is still no scheduled date for the Commerce & Labor executive hearing for workers' compensation legislation, but would continue to update the Council.

Vice Chair Corcoran asked that the Safety presentation be put on next month's agenda.

Motion made to adjourn.

MMS - passed.

Meeting adjourned 10:40 a.m.

The next regular meeting of the Advisory Council will be held on October 13, 1999, 9:00 AM, at the Division of Industrial Accidents, 7th Floor Conference Room, 600 Washington Street, Boston, MA 02111.