

**Massachusetts Workers' Compensation
Advisory Council Minutes**

January 14, 1998
Department of Industrial Accidents
600 Washington Street
Boston, MA 02111

Chair: Edmund C. Corcoran, Jr.

Vice Chair: William H. Carnes\

Present: Chairman Edmund C. Corcoran, Jr.; Vice Chair William H. Carnes. CM: Edward Sullivan, Jr.; Lawrence Morrisroe; Jeanne-Marie Boylan; Tony Frias; Robert Banks; John Gould; (Donald Baldini); Joseph Tamulis; Alan S. Pierce; Department of Labor & Workforce Development (Joan Lenihan).

Also Present: DIA: Commissioner Campbell; Senior Judge Jennings; Bill Sivert; Vinny Luca; Neil Gibbons (WCRIB); Carol Falcone; Denise Atwood (Department of Mental Retardation); Diane Jacobs (Rate Setting Commission).

Staff: Matthew Chafe; Andrew Burton; Ann Helgran.

Absent CM: John Perry; Bruce Cochrane; Amy Vercillo; Department of Economic Affairs (John Melina).

Agenda:

DIA Update

Injured Worker

Fiscal Year 1997 Annual Report

Criteria for Rating AJ & ALJ Candidates

Action Items

- Minutes - December 10, 1997

Insurance Rate Hearing

Executive Director Update

Chairman Corcoran opened today's meeting.

DIA Update

Stop Work Orders

Mr. Sivert reviewed the statistics on stop work orders. December Investigations, 466; SWO's issued, 191; fines imposed, \$200.00.

Personnel Issues

There have been no outside hires. Within the Investigations Unit, an investigator has been hired and another who had been out on workers' compensation has returned to work. The DIA is advertising for a "computer programmer." A stenographer has resigned, and it will be necessary to go outside the agency for a replacement. A clerk and an administrative secretary have resigned. There has been one staff promotion to a research analyst within the Office of Health Policy.

Chairman Corcoran requested that a list of personnel issues be sent to Council Members before their scheduled meetings.

Budgetary Matters

Chairman Corcoran asked Mr. Sivert about the status of a proposal to conduct an audit of insurance carrier payments of employer assessments.

Mr. Sivert stated that for fiscal year 1999 they had requested money to continue the upgrading in data processing, and money for the audit of insurance companies. Both requests were denied. He stated that there has never been an audit of the assessments. The DIA does not know if insurance companies who collect the assessments from the employers are paying the DIA the correct amount.

Council Members voiced concern over the fact that an audit has never been conducted. It was suggested that money from the Trust Fund could be used to conduct the audit, or funds in the payroll account that will not be expended due to vacant positions.

Chairman Corcoran asked for an accounting of the overages in the various funds. The Executive Director noted that \$12 million in the special fund was left over, \$8 million in the private fund, and \$2.2 million in

the public trust fund. It was explained that this money could not be used for the necessary audit without appropriation from the legislature.

A motion was made that it be noted that the Advisory Council has concerns about the assessment collections process, and requests detailed information from the DIA on how an audit will be conducted by the next meeting. If there is no progress, the Council will decide what further action to take in this matter.

MMS - passed

Chairman Corcoran inquired as to the status of the DIA's fiscal year 1999 funding request to be included in the Governor's budget, House One. Mr. Sivert informed the Council that there had been no change on what had been submitted to Council Members in the maintenance estimate provided in September.

Fiscal year 1999 is level funded.

Chairman Corcoran thanked Mr. Sivert and Mr. Luca. Senior Judge Jennings updated Council Members on the judicial statistics.

Hearing queue, 1,200; conference queue, 1,852; reviewing board queue, 371; and impartialists are running higher than last year, at 1996 levels. The one-year judges will be coming up for reappointment.

Commissioner Campbell congratulated Senior Judge Jennings on the high ratings contained in the most recent judicial survey conducted by the Massachusetts Bar Association. He distributed a copy of an article from the Boston Globe (attached to minutes) regarding the survey's findings. He also referred to a report done by the National Academy of Social Insurance.

Chairman Corcoran thanked Senior Judge Jennings and Commissioner Campbell.

Injured Worker

Chairman Corcoran introduced Attorney John Hislop, from the law firm of Hislop, Carney and Troupe. Mr. Hislop came before the Council to discuss the problems that he sees as a practitioner representing injured workers. He requested that the Council support legislation to increase benefits for injured workers. He also addressed the problem of accessibility to vocational rehabilitation for workers who have been high wage earners.

Mr. Hislop then introduced Mr. Saunders, an injured worker, whom he represents.

Mr. Scott Saunders is thirty-two years old. He came before the Council today to address the position of the injured worker on workers' compensation. He has had three back surgeries and will have a permanent

impairment to his earning capacity for the next 30 plus years. The maximum partial disability he can collect will compensate him for only four of those years. He has not been able to obtain rehabilitation because of his previous earning capacity, and is not clear what he will do in the future.

Council Members agreed that there is a deficiency in the vocational rehabilitation process but there was disagreement between Council Members regarding the benefit levels and their duration.

Chairman Corcoran thanked them for coming in before the Council.

Fiscal Year 1997 Annual Report

The Executive Director reviewed the revised Concerns and Recommendation section of the Annual Report, which had been included in Council Members' packets.

Another concern had been added regarding a code of judicial conduct for the DIA's judges. There is no code at present, and a recommendation was made to create a task force consisting of the senior judge, the administrative law judges, administrative judges and attorneys from both the claimants and defense bar to review the Judicial Code of Conduct for State Administrative Law Judges published by the American Bar Association.

In addition, "year end balances" was addressed. Because the DIA continues to have high year end balances, it was suggested that a plan be developed to diminish these sizeable accounts.

Motion was made to accept the entire Concerns and Recommendation Section of the Annual Report.

MMS - passed

Criteria for Rating AJ & ALJ Candidates

The Executive Director reviewed the Criteria for Rating AJ & ALJ Candidates, which had been sent out to Council Members.

Chairman Corcoran asked Senior Judge Jennings as to when the Council could expect to interview Judges. He was informed that it would be a while, and therefore tabled the guidelines for further discussion at the next meeting.

Action Items

Chairman Corcoran asked that a motion be made to accept the December 10, 1997 minutes. Motion made to accept the minutes.

MMS- passed.

Chairman Corcoran asked for a motion to accept the Annual Report as presented.

MMS - passed

Insurance Rate Hearing

The Executive Director updated the Council on the Insurance Rate Hearing. He noted that there was a motion session at the hearing in which the WCRB asked the hearing officer to introduce the Advisory Council's Ernst & Young report into evidence. The SRB objected stating that it would be inappropriate to submit the report into evidence, and if it were admitted the SRB should be entitled to cross-examine the consulting actuary. A decision has not been issued. It was further suggested that the Advisory Council pay for the actuary's time.

Chairman Corcoran stated, and Council Members agreed, that it is not the Council's issue, and that the parties involved should pay for the services of Mr. Cardoso.

Motion made to adjourn

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

The next regular meeting of the Advisory Council will be held on February 11, 1998, at the Division of Industrial Accidents, 7th Floor Conference Room at 9:00 AM, 600 Washington Street, Boston, MA 02111.