

**MASSACHUSETTS  
WORKERS' COMPENSATION ADVISORY COUNCIL  
MINUTES**

April 11, 2018

Department of Industrial Accidents  
1 Congress Street, Suite 100  
Boston, MA 02114-2017

**Council Members Present:** Todd Johnson; Mickey Long; Stephen Joyce; Teri McHugh; Stephen Falvey; Frank Ruel; Michael Kelley; James Steenbruggen; and Bernie Mulholland.

**Also Present:** Linda Edmonds Turner, Director; Bill Taupier, Director of Administration; Sheri Bowles, Director of Operations; Judge Omar Hernandez, Senior Judge; Kevin O'Leary, General Counsel; Karen Fabiszewski, Director of Workers' Compensation Trust Fund; Alan Green, Deputy Director of Investigations; Aaron D'Elia, CFO; Virginia McCarthy, Workers' Compensation Rating and Inspection Bureau (WCRI); Coy Jones, Public Consulting Group (PCG); Lauren Rodrigues, Public Consulting Group; and Zack Corradino, Public Consulting Group.

**Advisory Council Staff:** Maureen O'Connell, Executive Director; Rose Osterofsky, Project Coordinator II

**Absent:** John Regan; John Murphy; Executive Office of Labor and Workforce Development, Executive Office of Housing and Economic Development and Diane Walsh, Administration Assistant to Director and General Counsel.

**Agenda:**

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Chairman's Welcome

DIA Update

- Judicial Update – Senior Judge Omar Hernandez
- Vital Statistics – Bill Taupier, Director of Administration
- Director's Update – Linda Edmonds Turner
- CFO Update – Aaron D'Elia

Action Items

- February 14, 2018

Communication

Executive Director Update

Miscellaneous

- Coy Jones, Public Consulting Group (PCG) – Medical Rates

**CHAIRMAN'S WELCOME**

Good morning. As a courtesy to those that are present, we will get started. We can't take any votes, we don't have a quorum. We may have to move around the agenda. Toward the end of the meeting we will be discussing the Fiscal Year 2017 Annual Report, Council Members may want some time to review this and out of respect for their day and commitments I want to get everyone out at a reasonable time. So, unless my colleagues on the Council feel otherwise, I would like to get started.

Chairman Johnson directed the floor to Director Linda Turner. Director Turner introduced a new colleague, Sheri Bowles, Director of Operations for the Department of Industrial Accidents. The Council welcomed Ms. Bowles.

After the introduction, Chairman Johnson directed the floor to Mr. Bill Taupier.

## **DIA UPDATE**

### **Vital Statistics**

Director of Administration Bill Taupier updated Council members on the information contained within the DIA's vital statistics report for April 2018.

Mr. Taupier said that the April 2018 Conference queue is 401 cases, which is down when compared to the March figure of 513. This queue is lower than it's ever been. Currently, the average waiting period for a Conference is between 8 and 16 weeks. The April Hearing queue is 363, which is down slightly when compared to the March figure of 368. Fluctuations in the Conference queue will depend upon number of cases being referred to Conciliation, Judges scheduling cycles, and regional variations.

With regard to the Pending Hearing Decisions, there were three in the month of March and zero in the 12-36 month range.

The Review Board inventory is 66; this number is slightly down when compared to January's figure of 72. The Impartial Medical Examinations were 3,023; the number of Fee Waivers granted was 48 and \$1,395,603 was collected in examination fees.

With respect to Stop Work Orders (SWO), 148 were issued in the month of March (8 were defaults) for a total of 1,643 for Fiscal Year 2018. Fine collection for the month of March was \$66,005 with a Fiscal Year 2018 total of \$671,172. For Fiscal Year 2017 a total of 1,909 SWOs were issued with total fines collected at \$1,067,449.

Mr. Taupier provided the following statistics on Enforcement & Compliance: The DIA conducted 7,442 total compliance checks in the month of January. As a result of these efforts an estimated 3,993 workers have been brought under workers' compensation insurance coverage during the current fiscal year. During Fiscal Year 2017 we estimate 5,945 workers were brought under workers' compensation coverage.

Mr. Taupier offered the following statistics on cases filed within DIA: The number of Cases filed for March 2017 was 915. First Report of Injury (FRIs) filings for March were 2,613. Total FRIs filed for Fiscal Year 2018 is 23,362. No third party claims. The total number of FRIs filed for Fiscal Year 2017 was 33,854. Total cases filed for Fiscal Year 2018 is 8,834. The total cases filed for Fiscal Year 2017 was 11,924.

***Please note: a case is an employee claim, an insurers request for discontinuance, or a third party claim/lien.***

Mr. Taupier offered the following statistics: the Workers' Compensation Trust Fund (WCTF) ended the month of March 2018 with 90 uninsured persons reporting injuries. A total of 133 new Section 65 claims were recorded. As of today, payments against open claims are \$3,479,130. The WCTF made \$8,484,448 in payments against open claims during Fiscal Year 2017.

With respect to the recovery efforts, Mr. Taupier continued with statistics against uninsured employers: for Fiscal Year 2018 \$873,443 has been recovered by the Civil Litigation Unit and WCTF.

Chairman Johnson mentioned the outstanding year in 2017 with recovery efforts and asked what recoveries were on the horizon. General Counsel O'Leary mentioned that there were a few cases that have not come in yet, but that he expects the recovery amounts to increase. Even though recoveries are coming in, they are paying out less in uninsured claims.

Council Member Falvey asked how much of a drop that was in relation to Fiscal Year 2017 monies. Council Member Long asked Director Fabiszewski what the likelihood was that the employer (on the outstanding recovery claim) would pay back the money, she responded by saying that it was too early in the claim process.

Mr. Taupier provided statistics on the Second Injury Fund: \$15,148,300 in payments. The budget for this fund was \$31,000,000. The COLA reimbursements were \$5,251,501. The budget for the COLA was \$15,400,000.

Mr. Taupier continued with a personnel update: 225 employees.

Mr. Taupier presented the statistics on the referral fees for Fiscal Year 2018: \$3,134,910. Lastly, Mr. Taupier provided statistics on the assessment collections: Fiscal Year 2018 \$61,227,131.

Without additional questions for Mr. Taupier, Chairman Johnson directed the floor to Senior Judge Hernandez.

### **Judicial Update**

Senior Judge Omar Hernandez provided the timelines for the DIA offices between Conciliation and Conference. In Boston and Lawrence the timeline is two months, Springfield is operating at one and a half months, and Worcester at four months. The number in Worcester will decrease when a new Judge is placed in that region. Senior Judge mentioned that the numbers are down and the new Judges are doing well.

Council Member Joyce congratulated Senior Judge on decreasing the Pending Hearing decisions.

Without additional questions for Senior Judge Hernandez, Chairman Johnson offered the floor to Director Turner.

### **Director Update**

Director Linda Turner mentioned the strategic planning initiative that she has been working on for the past two months with the Executive Office of Labor and Workforce Development (EOLWD).

Director Turner discussed the building lease for the DIA and that the office was moving out of One Congress Street, Boston location in July 2019.

Council Member Joyce asked about the terms of the lease and Director Turner responded by saying that it was a 10-year lease.

Chairman Johnson asked Director Turner about the strategic planning initiative and what that entails. Director Turner said that it is early in the process, DIA is involved in the process, and she mentioned that it was an all-day brainstorming event with Secretary Acosta's staff. The Secretary is planning on completing this initiative with all of the Agencies under EOLWD. The focus is on continued or better customer service; how can we improve on what we already have.

Without additional questions for Director Turner, Chairman Johnson directed the floor to Mr. Aaron D'Elia.

### **CFO Update**

Mr. D'Elia provided a mid-year report (providing February 2018 data) on the Commonwealth of Massachusetts finances at the close out of Fiscal Year 2018. The information was provided in the packet to Council Members. Mr. D'Elia provided an update on the forecast of the finances. Even with the upcoming rate reduction that was recently announced, financially speaking the Agency is fiscally sound.

Mr. D'Elia indicated that Deloitte and Touche was hired on behalf of the DIA to perform actuarial work for the agency in support of the Fiscal Year 2019 assessment rate. Deloitte and Touche will work closely with DIA and members of Mr. D'Elia's audit group. Mr. D'Elia indicated that more revenue has been brought in when compared to the most recent Fiscal Year, which is a positive trend.

Chairman Johnson asked about the COLA figures; Mr. D'Elia said that he estimates that some payments will be coming through during the next fiscal year. Mr. D'Elia said that he errs on the side of caution in order to keep a fund balance.

Council Member Ruel asked about the revenue going up. According to Mr. D'Elia, Deloitte and Touche helps in developing an assessment rate.

Council Member Long asked about the reduction in the assessment rate. Mr. D'Elia explained that the rates have not gone down yet, but will decrease during the next fiscal year, effective July 1, 2018.

When asked about the working group, Mr. D'Elia said that a working group has been established to work on the assessment rates. The group consists of employees within DIA (Mr. Taupier) and the finance division (Mr. D'Elia and his group).

Council Member Falvey asked about economic growth projections. Mr. D'Elia said that it's too soon to project. Mr. Taupier provided commentary on this subject and said that the premiums will expand.

Council Member Long asked about the Commonwealth of Massachusetts payroll and Mr. Taupier said that the DIA is not privy to this information.

Director Turner said that it an economic-model system is used when calculating the new assessment rates.

Council Member mentioned the Gig Economy and the inefficiencies in the casual-labor market.

There was some confusion on the numbers, but Chairman Johnson indicated that the printout applies to last year's analysis, Mr. D'Elia confirmed this.

Oracle and IT - Cloud Migration were mentioned as drivers of the higher costs associated with the spending that occurred in the last fiscal year.

Without additional questions for Mr. D'Elia, Chairman Johnson offered the floor to Executive Director O'Connell.

### **Executive Director Update**

Executive Director O'Connell confirmed two guest speakers for the May 9, 2018 Advisory Council meeting, Chief Anthony DiPaolo from the Insurance Fraud Bureau and Dr. John Burrell from OccMed Consulting and Dr. Jennifer Christian of the Washington COHE program. Executive Director O'Connell said that she was not able to secure the Division of Insurance (DOI) to talk about Self-Insured Groups (SIGs). The current rate filing has been keeping DOI busy and it was learned that the employee who handled the SIGs is no longer employed with DOI and the unit has been split up among several different employees. This will be revisited in the fall when the rate filing has been completed, if necessary.

The Council members were provided a packet. The packet included a Legislative Update on bills relative to workers' compensation.

The public hearing for the WCRIB rate file - Audit Noncompliance (ANC) with the Division of Insurance (DOI) has been scheduled for May 3, 2018 at 10:00am at the DOI located at 1000 Washington Street, Boston, MA. Council Member Long asked if the letter that was sent to the Office of Attorney General Maura Healey and the Division of Insurance could be put into the record. WCRIB Legal Counsel, Virginia McCarthy said that she would assist the Executive Director on how to complete this request.

Moving to the legislative update, Executive Director O'Connell indicated that Senate Bill 1058 had been referred to the Committee on Senate Ways and Means on March 22, 2018. The bill is sponsored by Senator James Welch and applies to employers who operate in the state of Massachusetts for less than 20 days. If employer can provide workers' compensation coverage in another state they are deemed to be compliant. Senate Bill 2327 was a new draft of House Bill 1033 and Senate Bill 999 - An Act to prevent wage theft and promote employer accountability. No further action was taken on House Bills 1686 and 1774, and House Bills 1002, 1018, 1019, 1027, 1031, and 1034 accompanied a study order.

Council Member Steenbruggen mentioned Senate Bill 1058 and how this would affect the coverage issue. Deputy Director of Investigations Alan Green mentioned Form 154 Section 3C. Council Member Kelley offered commentary on this legislative bill.

Without a consensus from Council Members on Senate Bill 1058, no votes were taken on legislative bills.

Council Member Long made a motion that a letter be sent to the DOI in opposition of Senate Bill 1058, seconded by Council Member Falvey. Without a quorum, no votes were taken on this bill.

Regarding the Advisory Council's Fiscal Year 2017 Annual Report, Executive Director O'Connell provided a draft version of the annual report for Council Members to review, comment, and make edits.

Chairman Johnson mentioned the minutes for February 14, 2018. Motion made by Council Member Falvey and seconded by Council Member Long. With a unanimous vote, the minutes were approved.

### **Communications**

No communications.

Without additional questions for Executive Director O'Connell, Chairman Johnson offered the floor to Mr. Taupier who provided an introduction to Guest Speaker, Mr. Coy Jones.

### **Guest**

Mr. Coy Jones, Senior Consultant and Project Manager for Public Consulting Group (PCG) has been working with the Executive Office of Health and Human Services (EOHHS) and DIA since January 2018 to review and develop rates for the Massachusetts workers' compensation system. PCG's Headquarters are in Boston, MA with various offices throughout the country.

A packet was provided to Council Members and includes a review of the current regulations establishing rates for healthcare services under the Massachusetts Workers' Compensation Act, the evaluation and development or rate setting methodologies and the development of proposed rates for health care services.

Mr. Jones said that these rates had not been reviewed since 2009 and that he was contracted to evaluate whether they are appropriate and necessary as they apply to injured workers in the workers' compensation system.

Mr. Jones indicated that he is presenting information before today's listening session at One Ashburton Place, Conference Room 3, Boston, MA. The general objective for this session is to identify existing benefits and barriers related to the current workers' compensation program, current applicable regulations, the existing fee schedule, reimbursement related to specific service settings, and reimbursement related to specific service types.

Mr. Jones asked the Council if they had questions.

Council Member Joyce mentioned available providers as a concern and whether these physicians are the right ones for injured workers.

Council Member Long commented about physician fees.

Council Member McHugh discussed the board rate and process of negotiations.

Council Member Mulholland mentioned the two concerns he had: a) many do not want to negotiate and b) while negotiation is good, the leverage disappears post lump-sum settlement.

Mr. Jones said that if the usual and customary practices work, PCG doesn't want to change them. Mr. Jones said that they review data from the Workers' Compensation Research Institute (WCRI).

Mr. Taupier said that the statute pertaining to the medical rates is regulated by EOHHS, not DIA.

Chairman Johnson suggested that after the stakeholders meeting Mr. Jones come back and have a more in-depth discussion and present that information to the Council at a future meeting.

Chairman Johnson thanked Mr. Jones for his presentation.

### **Fiscal Year 2017 Annual Report**

Without a need for Executive Session, Chairman Johnson welcomed the DIA Administration to stay to discuss the Fiscal Year 2017 Annual Report, however all guests left the meeting and the 11 Advisory Council members discussed the Fiscal Year 2017 Annual Report.

Executive Director O'Connell provided samples of annual reports from various agencies within the Commonwealth. The starting point is a reduced size report to highlight major milestones in 2017.

Council Member Falvey provided positive commentary on the industry breakdown.

Council Member Long shared his concerns; he favored the previous versions of the annual report including the graphics.

Council Member Kelley said that he liked the new format and asked for information to be added into the claims section.

Chairman Johnson said that the highlights are areas of concern and focus for Fiscal Year 2017, a snapshot in time.

Council Member Ruel said that he liked the new format and requested that more information be added to the dispute resolution section.

Council requests to elaborate on the legislative section were made.

Executive Director O'Connell mentioned that when EOLWD asked for a completion date on the annual report, she responded with May 2018.

With only six voting members in support of the new version of Fiscal Year 2017 Annual Report and without a quorum a vote was not taken on the annual report. Revisions will be made and a vote will be taken at the May 9, 2018 meeting.

**The next meeting of the Advisory Council is tentatively scheduled for Wednesday, June 13, 2018 at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.**