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MINUTES

December 11, 2019
Department of Industrial Accidents
Lafayette City Center
2 Avenue de Lafayette
Boston, MA 02111-1750

Attendees: John Pulgini; Stephen Joyce; Teri McHugh; James Steenbruggen; Michael Kelley; Bernard Mulholland; Patrick Walsh; Stephen Falvey; Sheri Bowles, Interim Director; Bill Taupier, Director of Administration; Kevin O'Leary, General Counsel; Omar Hernandez, Senior Judge; Karen Fabiszewski, Director of Workers' Compensation Trust Fund; Peter Vitali, Lawrence Regional Manager; Maryann Brunton, Regional Manager Springfield; Shamia Monroe, Regional Manager Fall River; Vincent Lopes, Regional Manager Worcester; Alan Green, Deputy Director of Investigations; Robert Cronin, Director of Investigations; Anthony DiPaolo, Insurance Fraud Bureau of Massachusetts (IFB); Virginia McCarthy, Workers' Compensation Rating and Inspection Bureau (WCRI); Maureen O'Connell and Halina Poliszczuk.

AGENDA

CHAIRMAN'S WELCOME DIA UPDATE

- DIA Judicial Update - Senior Judge Omar Hernandez
 - Conference | Hearing | Reviewing Board Queue
 - Impartial Medical Exams | Physicians
- DIA Vital Statistics - Bill Taupier, Director of Administration
 - Cases Filed with DIA
 - Workers' Compensation Trust Fund
 - Personnel Update
 - Enforcement and Compliance
- Director's Update - Sheri Bowles, Interim Director

EXECUTIVE DIRECTOR'S UPDATE

- Legislative Update

ACTION ITEMS

- Minutes - November 13, 2019

COMMUNICATIONS

N/A

MISCELLANEOUS

- Anthony DiPaolo, Chief of Investigations, Insurance Fraud Bureau of Massachusetts
- Alan Green, Deputy Chief of Investigations, Department of Industrial Accidents

CHAIRMAN'S WELCOME

Chairman John Pulgini called this meeting to order at 9:15am.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez stated that conference queue is up a little bit due to the holidays/vacations. Time frames for conciliations and conferences in Boston and Springfield is at 3 months, Fall River and Worcester 3.5 months, and Lawrence is 2.5 months. Pending hearing decisions have been trending downward and are now at four (4).

Chairman Pulgini asked about the pending hearing decisions and if they were a result of Accidental Disability Retirement (ADRs); Senior Judge Hernandez confirmed.

Senior Judge Hernandez mentioned that he will be working with a UMass-Lowell student from the Program Center for Promotion of Health in the New England Workplace about the opioid program. A three year study was awarded, and they will be working with Dr. Erdil from UConn Medical School, hopeful to publish a paper, with the program starting in January, 2020.

Chairman Pulgini asked Senior Judge Hernandez whether there are judicial spaces open or are the positions not being filled at this time. Senior Judge Hernandez stated that with regard to the judicial reappointment process, that will most likely be finalized in January, 2020. Three Judges will be up for reappointment in 2020, Judges Mahar, Benoit and Koziol.

Council Member Michael Kelley asking Senior Judge about the impartial fee process. Senior Judge responded that there was a conflict and that he has not met with the Massachusetts Bar Association, but will be meeting in January 2020. He will have additional information at next month's meeting.

Chairman John Pulgini asked about raising the rate and how much physicians received; Senior Judge responded \$650.00. Council Member Kelley added that his company pays \$800.00-\$1500.00 depending on the nature of the case, with respect to subspecialties, the fee goes up. Council Member Kelly states that the concerns are whether the physicians are not doing them and now they take four to six months to get an impartial exam. Senior Judge has spoken with his staff and they are working on this issue to have it resolved quickly.

Without any further questions for Senior Judge Hernandez, Chairman Pulgini directed the floor to Director of Administration, Bill Taupier.

Vital Statistics

Director of Administration, Bill Taupier said that the December Conference queue is 604 cases, which is up compared to the November figure of 388. Currently, the average waiting period for a conference is 10 to 14 weeks. The December 2019 Hearing queue is 707. This is up when compared to the

November figure of 624.

Mr. Taupier said that for the past three months the pending hearing decisions have decreased going from the month of September at seven, October five, and for the month of November four.

Mr. Taupier said the Reviewing Board inventory of cases on appeal for the month of December is 67 cases. This is up when compared to the November inventory of 59.

Mr. Taupier said the DIA issued 112 Stop Work Orders (SWOs) in the month of November for a total of 584 for FY 2020. Please note that 28 SWOs were reissued as the result of defaults of previous orders. Fine collection for the month of November 2019 was \$0.00 with a FY 2020 total of \$242,799. For Fiscal Year 2019 a total of 2,028 SWOs were issued and total fines collected was \$1,165,656.

Council Member Kelley asked if there a reason why we have been down every month this year in SWOs. Guest Speaker Deputy Director Alan Green stated that the DIA is down two investigators.

Chairman Pulgini asked that Mr. Taupier explain that 28 SWOs were reissued as a reason of default. Deputy Director Alan Green mentioned that there's a policy, but then the company defaulted. Council Member Kelley wanted clarification of the reissue and default, Deputy Director Green mentioned that the investigator issued a stop work order and the company failed to respond. Council Member Kelley mentioned the automotive shop on the SWO list asking for clarification on that and how many cases actually file criminal complaints, Deputy Director Green responded five or six.

Chairman Pulgini asked how long the criminal investigation process was, General Counsel Kevin O'Leary said one year and went on to explain the appeals process, default process, local police can be involved, the stop work order shuts the business down, and a criminal complaint can be issued. The Council on the Underground Economy (CUE) is also involved, it is a multi-jurisdictional collaboration among many agencies and there is a lot of cooperation with regard to this process.

Mr. Taupier said that the DIA conducted 6,635 total compliance checks in the month of November. As a result of these efforts an estimated 1,964 workers have been brought under workers' compensation insurance coverage during the current fiscal year. During FY 2019 we estimate that number of workers was 5,486.

Council Member Stephen Falvey asked about the industries that generated the most uninsured claims in the Trust Fund, 45% was construction, followed by the transportation industry and asked Deputy Director Green about the number of construction sites the investigative team focuses on.

Deputy Director Green said they have 16 investigators, two teams of eight that cover the state of Massachusetts. Deputy Director Green said that he is focusing on job sites and is aware of the subcontractor issue and mentioned a tree cutting business in Wakefield, MA where an employee died on the job, issued two SWOs and the remaining workers were considered to be day laborers. Deputy Director Green indicated that people are compliant and that's a factor in the numbers decreasing. He indicated that they do not accept Acord insurance forms, but mentioned the coverage verification system on the DIA database.

Council Member Falvey said that it's worth repeating if the Trust Fund gets hit, it's a system failure. He also asked about the construction industry and if they are receiving referrals from the construction industry, Deputy Director Green said no. Criminal complaints are order five to six times per year file criminal which are forwarded to our in-house Counsel.

Chairman Pulgini asked Council Member Bernie Mulholland about the Section 18 mechanism and whether that was implemented during the SWO process. General Counsel O'Leary confirmed that's why his unit does not see these types of cases because they are addressed within Section 18 statute.

Council Member James Steenbruggen asked about Certificates of Insurance and whether a contractor would have one.

Council Member Kelley explained the process of coverage selection process and the DIA database that can verify companies who have insurance. The process is there to keep the honest people honest.

Without any further questions for Deputy Director Green, Chairman Pulgini directed the floor to back to Mr. Taupier.

Mr. Taupier continued to update the Advisory Council on the personnel update and that they were in the process of hiring a claims supervisor and two conciliators (one for Worcester one for Springfield).

Mr. Taupier said that with regard to First Reports of Injury & Cases (FRI) Filings with the DIA, the number of cases filed for November 2019 was 972, total FRIs for November were 2,716. Total FRIs filed for FY 2020 is 11,437. The total number of FRIs file for FY 2019 was 34,169.

Mr. Taupier said total cases filed for FY 2020 is 5,124. The total number of cases filed for FY 2019 was 12,659. Please note: a case is an employee claim, an insurers request for discontinuance or a third party claim/lien.

Mr. Taupier said that as of November 30, 2019, 46 uninsured injuries have been reported to the Workers' Compensation Trust Fund (WCTF) for Fiscal Year 2020. For Fiscal Year 2019, a total of 117 new Sec. 65 injuries were recorded. Please note, claims may be determined to be insured or uninsured after they have been filed. As of this date, payments against open claims in FY 2020 stands at \$3,109,994, recovery efforts are \$489,517. The WCTF made \$6,613,536 in payments against open claims during FY 2019.

Mr. Taupier said the Workers' Compensation Trust Fund (WCTF) staff make every effort to recover monies owed. The Civil Litigation Unit utilizes the courts and the authority of M.G.L. Chapter 152 to recover money paid on uninsured claims by taking legal action against the employer in question.

Mr. Taupier said that the Secondary Injury Fund Budget and Payment by Fiscal Year charts shows dollars Paid for Section 37/37A Claims (including quarterly payments and interest) by Fiscal Year. Section 37/37A claims are filed by insurers who are seeking reimbursement of up to 75% of benefits paid for a second injury per the statute, payments include interest. Mr. Taupier provided statistics on

the Second Injury Fund: \$5,506,487. The COLA reimbursements were \$405,782. COLAs are quarterly and lag behind. The budget of \$14,000,000 is conservative.

DIA personnel changed to 211. Mr. Taupier said that they are in the process of hiring employees in Boston, Worcester, and Springfield. Staff are paid from either the General Appropriation Account or the WCTF depending upon their job. This number reflects FTEs and PTEs currently working for the DIA.

With regard to referral fees, \$1,368,742 has been received thus far and in assessment collections, \$20,325,694.

Without any further questions for Mr. Taupier, Chairman Pulgini directed the floor to Interim Director Sheri Bowles.

Interim Director Update

Interim Director Bowles indicated that the DIA is presently working to backfill open positions. She provided an update after attending the Health Care Services Board (HCSB) meeting on December 7, 2019 where the Department of Public Health (DPH) issued a report about workers injuries that was retrieved from the DIA lost wage claim data. The goal was to see how they can improve the safety of workers in Massachusetts, private sector workers. This report was a collaborative effort among DIA, DPH, and DLS (Department of Labor Standards) and covered the period from 2014-2016. The report can be obtained on the DIA website.

Council Member Kelley asked for the outcome of the report. Mr. Taupier responded that the focus was how to properly use this data intervention and how to reach out to communities. There were no signification conclusions. Data was collected between 2014-2016.

Without any further questions for Interim Director Bowles, Chairman Pulgini directed the floor to Executive Director Maureen O'Connell.

Executive Director's Update

Executive Director Maureen O'Connell updated the Council on the legislative bills contained in their packet and asked members to review the current legislation within the Joint Committee on Labor and Workforce Development and to advise whether bills are of interest. Executive Director O'Connell welcomed Guest Speaker Anthony DiPaolo.

Guest Speaker

Anthony DiPaolo Chief of Investigations for the Insurance Fraud Bureau of Massachusetts (IFB) was invited by the Advisory Council members to address concerns with workers' compensation investigations. Chief DiPaolo provided a brief history of the IFB and answered Council Members' questions. Since inception, the IFB has had 3500 referrals, they are more successful with workers' compensation cases as the dollar value is typically higher for premium fraud cases, while 15% of the referrals they accept are workers' compensation cases.

Council Member Mulholland asked about the IFB inventory, most of their inventory is automobile related said Chief DiPaolo.

Council Member Kelley asked if the IFB refers cases to the DIA, Chief DiPaolo said that the two agencies work closely together. Follow up question was also asked to Senior Judge Hernandez about whether judges refer cases, to which he responded yes. From an insurance company perspective, the statute mandates a referral be made if fraud is suspected, this is where the immunity statute comes into play said Council Member Kelley.

Council Member Stephen Joyce mentioned that this is where the premium avoidance comes in, Chief DiPaolo said that 20 of the cases are of this type and confirmed that 35 cases had been referred to prosecutors. Council Member Joyce said that people are buying policies but not reporting labor and that this is under policy limits. A labor broker may buy the policy.

Chief DiPaolo said that the auditors need to meet with the companies face-to-face in order to conduct an audit.

Council Member Kelley said there must be a focus on education and that in Milford, MA there is a focus on the construction industry and that brokers are focused in this area, casual day laborers too.

Council Member Joyce spoke about his experience while working with IFB when he was employed at the Attorney General's office. Chief DiPaolo confirmed that the referral process is a collaborative one and that must include the insurance carrier and others involved in the process. He confirmed that the IFB has taken an aggressive stand when a test audit needs to be conducted with a contractor.

When asked by Council Member Mulholland asked about the funding of Attorney General's for insurance fraud, Chief DiPaolo confirmed that this is still in play. Council Member Mulholland also asked about the claimants who stage automobile accidents, Chief DiPaolo confirmed that they've had about 10 cases.

DIA Lawrence Regional Manager Peter Vitale inquired as to the 20% staff that handles workers' compensation cases, Chief DiPaolo responded that he has 8 investigators working on these cases.

Without a quorum, votes were not taken on the October 10 and November 13, 2019 minutes.

Without additional questions, the meeting adjourned at 10:10am.

The next meeting of the Advisory Council is tentatively scheduled for January 8, 2020, 9:00am at the Department of Industrial Accidents, Lafayette City Center, 2 Avenue de Lafayette, Commons Conference Room, Boston, MA 02111-1750