



MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL

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MINUTES

February 13, 2019
Department of Industrial Accidents
1 Congress Street, Suite 100
Boston, MA 02114-2017

Attendees: John Pulgini; Mickey Long; Stephen Joyce; Teri McHugh; Michael Kelley; Bernie Mulholland; Stephen Falvey; Linda Edmonds Turner, Director; Sheri Bowles, Director of Operations; Bill Taupier, Director of Administration; Omar Hernandez, Senior Judge; Kevin O'Leary, General Counsel; Karen Fabiszewski, Director of Workers' Compensation Trust Fund; Virginia McCarthy, Legal Counsel, WCRIB and Darnel Turbides.

AGENDA

Chairman's Welcome

DIA Update

- DIA Judicial Update – Omar Hernandez, Senior Judge
 - 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 – Linda Turner, Director
 - SIGs
 - Civil Recovery
- Executive Director's Update
 - Legislative Update
- Action Items
 - Minutes – December 18, 2018
- Communications
 - Lease Update
- Miscellaneous
 - Camargo Case

CHAIRMAN'S WELCOME

The meeting began at 9:30 AM and Chairman Pulgini directed the floor to Senior Judge, Omar Hernandez.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez opened the meeting with the conference queues; Boston and Lawrence time frame between conciliation and conference is three and a half months, Fall River and Springfield is five months, Worcester is four months. A discussion was had with the Massachusetts Bar Association about these queues. Due to a few judges dealing with personal issues, Senior Judge Hernandez increased conferences from five to eight per day.

Senior Judge Hernandez also mentioned his concern for continuances and how they're steadily increasing year after year. In 2016, 38% of all conferences were rescheduled, in 2017 it increased to 39% and in 2018, 43% of all conferences were rescheduled. This impacts the scheduling unit.

Chairman Pulgini commented on the queue and how it is referred to in the monthly statistics report. Director of Administration Bill Taupier confirmed this. Senior Judge Hernandez further expressed his concern by stating that out of 11,900 conferences, 5,200 of those were rescheduled.

Council Member Teri McHugh and Council Member Bernie Mulholland expressed concern with the queue. Mr. Taupier added that the delays are affecting those requesting a speedy conference with the wait period ranging between six to eight weeks.

Council Member Mulholland appreciated speedy conference requests and asked whether there were abuses. Senior Judge Hernandez said no, but that there were still concerns with the continued cases.

Council Member Mickey Long expressed concern with the unpaid worker. Council Member Long indicated that there should be a priority mechanism in the workers' compensation system. Chairman Pulgini confirmed that most workers are receiving compensation during these continuances.

Council Member Michael Kelley asked for an update on the status of appointing the new judge. The Administration conducted interviews, but no further updates. Chairman Pulgini asked where the judge would sit, Senior Judge Hernandez confirmed Worcester.

Senior Judge Hernandez also mentioned Judges' terms that expired in 2018; Judge Harpin, Judge Williams and Judge Preston. Judge Harpin is retiring in April and will not be seeking reappointment.

This year, Judge Herlihy, Judge Calliotte and Judge Vieira's appointments will expire. Judge Vieira is retiring in July and will not be seeking reappointment. Senior Judge Hernandez expressed concern with the Governor's Office about expired terms.

Lease Update

Chairman Pulgini moved the agenda out of order and the Director of Operations Sheri Bowles provided the lease update in response to Council Member Mulholland's request for an update. Ms. Bowles confirmed that the DIA will remain within the Downtown, Boston area, will be close to most major trains, bus lines and will have plenty of parking. With regard to the Worcester lease, it is currently in review with the Division of Capital Asset Management and Maintenance (DCAMM) commissioner for signing.

Council Member Kelley asked when the DCAMM signing for Worcester will take place. Ms. Bowles confirmed the signing will take place in one to two weeks.

Council Member Stephen Joyce inquired into whether the DIA had a build out, Ms. Bowles confirmed.

Chairman Pulgini asked if the Boston office can expect to be in the new location by July, Ms. Bowles confirmed.

Council Member Long asked who the contact person was for lease negotiation; Ms. Bowles confirmed that she is the contact person. Mr. Taupier confirmed that DCAMM is the tenant, DIA is the user.

Council Member Long asked if the build out is part of the procurement process. General Counsel Kevin O'Leary confirmed that the lease doesn't expire until 2020.

Without any further questions, Chairman Pulgini directed the floor back to Senior Judge Hernandez.

Senior Judge Hernandez provided statistics for pending hearing decisions in the month of January; three in 6-9 months, two in 12-36 months and trending lower than last year. Senior Judge Hernandez looked into the two in 12-36 months and noticed there were no close dates on those and will follow-up and find out why they don't have close dates.

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

Vital Statistics

Mr. Taupier said the February 2019 Conference queue is 1,070 cases, which is down compared to the January figure of 1,328. Currently, the average waiting period for a conference is between 14 and 20 weeks. The February 2019 Hearing queue is 314, this is slightly up when compared to the January figure of 309.

With regard to Pending Hearing Decisions, there were five in the month of November, eight in December and five in January.

The Reviewing Board inventory of cases on appeal for the month of February is 83 cases. This is down slightly when compared to the January inventory of 87.

The Impartial Medical Examinations (IMEs) were 2,056 for FY 2019; the number of fee waivers granted was 42 and \$1,010,694 in collected exam fees.

Council Member Kelley asked if there has been any pushback from the current impartial medical exam fee from physicians. Senior Judge Hernandez said they've struggled with retaining some of the physicians at the current rate of \$650.00.

Council Member Kelley asked about the impartial medical fees and whether they are set by regulation or statute. Senior Judge Hernandez said that the fees are set by regulation.

Council Member Mulholland provided his experience with the medical fee. Council Member Kelley said there should be a discussion surrounding this. Senior Judge Hernandez said he would put this on agenda for next meeting.

Mr. Taupier provided statistics on Stop Work Orders (SWO), 172 were issued in the month of January for a total of 1,221 for FY 2019. 89 SWOs were reissued as the result of defaults of previous orders. Fine collection for the month of January was \$46,907 with a FY 2019 total of \$585,899. For FY 2018 a total of 1,909 SWOs were issued; and collected \$983,445 in total fines.

The DIA conducted 6,861 compliance checks in the month of January 2019 with 3,192 workers brought under workers' compensation insurance coverage. The office and field compliance checks are 3,075 (Office) and 3,786 (Field) totaling 6,861 compliance checks for the month of January 2019.

Cases filed within DIA claims administration for January 2019 was 1,079. First Report of Injury (FRI) filings for January were 2,926. Total FRIs filed for FY 2019 is 19,472. FRIs for FY 2018: 34,430. Total cases filed for FY 2019 is 7,412. Cases filed in FY 2018: 11,979.

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 WCAC Trust Fund had 62 uninsured injuries for FY 2019 and 112 new Section 65 injuries were recorded in FY 2018. This figure is trending lower than last year. A total of 133 new Section 65 claims were recorded. As of today, payments against open claims stand at \$3,948,611. The WCTF made \$8,102,089 in payments against open claims during FY 2018.

Council Member Long asked which industries make up the 62 uninsured injuries in the FY 2019 report. Director of Workers' Compensation Trust Fund Karen Fabiszewski will provide data at the next Advisory Council meeting.

With respect to the recovery efforts, Mr. Taupier offered statistics against uninsured employers for FY 2019: \$806,132 has been recovered by the Civil Litigation Unit and Workers' Compensation Trust Fund (WCTF).

Chairman Pulgini asked if the recovery efforts were done in-house. Both Mr. Taupier and General Counsel O'Leary confirmed. Chairman Pulgini commended the DIA for the recovery efforts. General Counsel O'Leary said David Michels was doing a great job.

General Counsel O'Leary added that there are few attorneys within the Trust Fund whose primary focus is collections. General Counsel O'Leary mentioned that there is an additional \$300,000 to \$350,000 recovered by the WCTF that will be added to the next report.

Mr. Taupier provided statistics on the Second Injury Fund: \$9,180,514. The COLA reimbursements were \$4,725,004. COLAs are quarterly and lag behind. The budget of \$18,500,000 is conservative.

Council Member Kelley asked where the COLAs were in comparison to FY 2018. Mr. Taupier indicated they are roughly the same.

DIA personnel changed from 219 to 215. With regard to referral fees, \$2,728,929 has been received thus far and in assessment collections, \$38,908,400.

Senior Judge Hernandez mentioned that they are very close to hiring three new Stenographers; one for Boston, one for Worcester and one for Springfield and should have them all in place within the next month. Mr. Taupier added that there are a few additional positions in the pipeline; Claims Manager, Trust Fund Attorney and 2 new Vocational Rehabilitation Review Officers.

Council Member Long asked for confirmation on these open positions. Mr. Taupier stated these were open positions waiting to be filled.

Mr. Taupier presented the statistics on the referral fees for FY 2019: \$2,728,929.

Lastly, Mr. Taupier provided statistics on the assessment collections: FY 2019: \$38,908,400.

Without additional questions for Mr. Taupier, Chairman Pulgini directed the floor to Director Linda Turner.

Director Update

Director Linda Turner informed the Council that the process for the state audits are now starting and will arrange the audit process to cover about 25% of the list each year and will be completed by the next round in August of 2019. Director Turner confirmed this with Internal Audit Director Stetson Marshall.

Director Turner answered the question posed by Council Member Long at the last Advisory Council meeting regarding the \$30,000 civil recovery. Director Turner said that it will be included in the FY 2019 report which is currently being worked on by Executive Director Maureen O'Connell.

Director Turner informed the Council that CFO for EOLWD Aaron D'Elia will have a financial report ready to discuss his budgeting strategy by the next meeting in March.

Council Member Kelley asked about the Self-Insured Group (SIG) audits. Director Tuner and Ms. Fabiszewski said that the audits will go back 3 to 4 years.

Council Member Kelley asked if there is anything being done about the standalone self-insurers. Director Turner said there is a process but will need to follow up to provide more details.

Council Member Kelley expressed his concern with the SIGs and how everyone is not being checked on.

Executive Director O'Connell was unable to attend the meeting; however Chairman Pulgini mentioned expressed interest in the vacant Vocational Rehabilitation position.

Chairman Pulgini inquired as to how many members were operating in expired terms.

Council Member Long expressed his concern with the expired terms of Council members.

Council Member Joyce requested that the Governor's Office be notified of these vacant positions.

Council Member Long mentioned the Camargo case, Independent Contractor Law and wishes for this case to be discussed when there's a quorum. Legal Counsel Virginia McCarthy acknowledged Council Member Long's concern.

Without a quorum, votes were not taken on the December 2018 minutes.

Without additional questions the meeting adjourned at 11:00am.

The next meeting of the Advisory Council is tentatively scheduled for March 13, 2019, at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017