

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

April 8, 2015

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

Council Members Present: Stephen Joyce; Mickey Long; Todd Johnson; Frank Ruel; Bernie Mulholland; Stephen Falvey; John Pulgini; Teri McHugh; Michael Kelley.

Also Present: Linda Turner, Acting Director; Omar Hernandez, Senior Judge; Bill Tattan, General Counsel; Bill Taupier, Deputy Director of Administration; Marc Joyce, Sr. Regional Services Manager; John Riordan, Deputy General Counsel; Karen Fabiszewski, Trust Fund Director; Alan Green, Acting Director, Investigations; Bob Ford, Chief Financial Officer (CFO), EOLWD; Melissa Butts, Program Coordinator, Underground Economy; Christine Cronin, WCRIB.

Advisory Council Staff: William S. Monnin-Browder; Evelyn Flanagan.

Absent: John Regan; Bill Corley; Dennis Hines; Executive Office of Housing and Economic Development; Executive Office of Labor and Workforce Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update – Omar Hernandez, Senior Judge
- Vital Statistics – William Taupier, Deputy Director of Administration
- Budget Update – Bob Ford, Budget Director
- Directors Update – Acting Director Linda Edmonds Turner
- Upcoming Changes to the Assessment Process

Action Items

- Minutes – January 14, 2015
- Minutes – February 11, 2015
- Minutes – March 11, 2015

Executive Director Update – William Monnin-Browder

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Steve Joyce asked Mr. Bill Taupier to begin the DIA update.

DIA UPDATE

Vital Statistics

Bill Taupier updated Council members on the information contained within the DIA's vital statistics report for April 2015. He offered the following statistics: Conference Queue: 512; Hearing Queue: 600; Reviewing Board Inventory: 74; Impartial Exams for FY'15 (to date): 3,079 (77 waivers); Exam Fees

Collected for FY'15 (to date): \$1,453,618; Impartial Medical Examinations in FY'14: 4,376 (22 waivers); and Exam Fees Collected in FY'14: \$2,018,883.

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in March: 195 (5 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'15 (to date): 1,519; fine collection for March: \$71,795; total fines in FY'15 (to date): \$799,286; SWOs issued in FY'14: 2,345; total fines collected in FY'14: \$2,018,883; compliance checks for March: 7,487; estimated number of workers now covered by workers' comp. insurance as the result of a SWO: 4,200 in FY'15 (to date).

Council Member Mickey Long asked what constitutes an "investigation" as listed on the slide that states that 7,487 investigations were conducted in March.

Mr. Taupier explained that the 7,487 investigations would be better described as "compliance checks."

Acting Director Alan Green stated that the investigators have access to a database that they can use to check companies to see if they have a valid workers' compensation policy. He explained that checking the system to determine whether an employer has coverage is a compliance check.

Mr. Long asked if there were 7,487 compliance checks and 195 SWOs, does that mean that there was coverage in the other instances where a compliance check was done but no SWO was issued. He also asked if employers are given an amount of time to cure.

Mr. Green stated that Mr. Long was correct. He explained that there is not an opportunity to cure.

Chairman Joyce explained that in some situations where an employer has coverage, but is unable to prove it to the investigator, a SWO will be issued, but it will be rescinded if the employer is able to show that coverage was in place.

General Counsel Bill Tattan noted that there is a gap when an employer did not have coverage and a stop work order was issued, the stop work order stays in effect until proof of coverage is provided and all fines paid. He noted that they only rescind if there was no gap in the coverage.

Mr. Long asked whether a carrier can backdate a policy to trigger the rescinding of a SWO.

Council Member Todd Johnson explained that in some circumstances, a carrier might do this and require a no-loss letter from the insured.

Mr. Tattan said that the Agency would only rescind if it is determined that there was no authority for the Agency to issue the SWO in the first place.

Chairman Joyce asked Mr. Taupier to pause the DIA update, so that the Council could take up its action items.

ACTION ITEMS

A motion was made to approve the January 14, 2015 minutes.

Motion seconded and carried.

A motion was made to approve the February 11, 2015 minutes.

Motion seconded and carried.

A motion was made to approve the March 11, 2015 minutes.

Motion seconded and carried.

DIA UPDATE (CONTINUED)

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in March 2015: 1,005; total cases filed in FY'15 (to date): 8,776; total cases filed in FY'14: 11,960; total First Report of Injury Forms (FRI) filed in March 2015: 3,064 (2,706 filed electronically; 88%); total FRIs filed in FY'14: 31,384 (11,937 online). In March 2015 the number of employee claims filed: 838; number of employee claims filed in FY'15 (to date): 7,374; number of discontinuances filed: 160; the total number of discontinuances filed in FY'15 (to date): 1,370; the number of third party claims filed: 7; total number of third party claims filed in FY'15 (to date): 32.

Bill Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY'15 (to date): 62; total amount of §65 claims paid by the Trust Fund in FY'15 (to date): \$5,716,361; total §65 claims filed in FY'14: 107; total amount of §65 claims paid by the Trust Fund in FY'14: \$8,663,080; total recovery efforts against uninsured employers FY'15 (to date): \$1,255,974; total recovery efforts against uninsured employers FY'14: \$1,013,557.

Mr. Taupier noted that with 62 §65 claims to date, the number of §65 claims is tracking to be the lowest number of claims reported since the DIA began keeping track in 1991. He stated that in 1991 there were over 300 §65 claims.

Council Member Mickey Long stated that this is good news for the people who pay the premiums, the employers in the Commonwealth, and that a press release should be issued. He stated that he would like to use Mr. Taupier's quote that this is the lowest number of §65 claims filed since the DIA began keeping track in 1991. Council Member Long made a motion for the Advisory Council issue a press release regarding the low number of §65 claims filed. There was no second.

Chairman Joyce stated that he would like to recommend to the administration that they do press releases on news such as this, as there is a lot of good news that comes out of the Agency. He noted that the Advisory Council's FY'14 Annual Report has not yet been released. He explained that, as a courtesy to the new administration, the report was sent up to EOLWD for review a number of months ago, but that it is still being reviewed. He expressed a desire to get the report out as soon as possible.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A), stating the following: total amount of §37/37A petitions paid in FY'15 (to date): \$18,645,994; total amount paid on these claims in FY'14: \$28,467,448; total COLA reimbursements to insurers in FY'15 (to date): \$7,352,378; total COLA reimbursements to insurers in FY'14: \$15,744,268.

Mr. Taupier reported that as of February 2015, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 239 (185 DIA employees, 54 WCTF employees).

Council Member Bernie Mulholland inquired about the status of the proposed early retirement incentive program (ERIP). He stated that at the last meeting, there was some discussion about the impact of such a program on judges, but that he had heard that there are a lot of other DIA employees who are interested in participating.

Mr. Taupier stated that since the legislation is still pending in the legislature and language has not been finalized, it is unclear at this point what the impact of an ERIP will be on the DIA.

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY' 15 (to date): \$2,784,908; total referral fees collected in FY' 14: \$3,612,740; total first report fines in FY' 15 (to date): \$18,775; total first report fines in FY' 14: \$129,474; total assessment collections in FY' 15 (to date): \$48,204,958; total assessment collections in FY' 14: \$50,224,950; total SWO fines in FY' 15 (to date): \$104,720; total SWO fines in FY' 14: \$1,327,628.

Judicial Update

Senior Judge Hernandez stated that the time frame between conciliation to conference was between two and two and a half months across all regions. The Senior Judge noted that three judges are planning to retire between June and August. The Senior Judge stated that to make sure the queues remain steady, he would be increasing conferences.

The Senior Judge stated that he is working with EOLWD, as well as the Judicial Nominating Committee, to get Administrative Judge positions posted. He stated that he submitted the timeline for approval and that he should hear back soon. He stated that he hoped to have the names to the Advisory Council by the June meeting and submitted to the Governor sometime in August. He explained that if the timeline is approved, he could have the judges on board to begin training sometime in September.

The Senior Judge stated that he is in the process of planning a workers' compensation conference that will include three states: New Hampshire, Rhode Island and Massachusetts. He explained that the target date is October. He noted that once he had the date, he would send out a flyer with all of the information.

Upcoming Changes to the Assessment Process

Chief Financial Officer Bob Ford stated that two years ago, the State Auditor did an audit of the DIA. He explained that the audit found that the DIA needed to improve its processes for establishing and verifying the accuracy of workers compensation insurance assessments. Mr. Ford stated that the following changes to the process have been recommended:

1. Adjusted filings that do not fall within the current reporting period, must be listed on Form 50X or Form 51X.
2. Require that all adjustments be filed on a form 50X or 51X; and all adjustments are reviewed prior to being applied to the Insurance Assessment account.
3. Cap all adjustments to 36 month period.
4. Establishment of an automatic algorithm to calculate the policy listings against the form 50 Filings and rates thus eliminating room for error and ensuring 100% initial audit on all filings.
5. Require that Form 50 only encompasses current premium filings.

Mr. Ford stated that they have reviewed the changes with the WCRIB. He explained that he expects a circular letter will be circulated later this week notifying the insurance companies of the changes.

DIRECTOR'S UPDATE

Acting Director Linda Turner stated that she agreed with earlier statements from members that the DIA should do more publicity to raise the profile of its successes.

EXECUTIVE DIRECTOR'S UPDATE

Executive Director William Monnin-Browder explained that Senate Bills have not yet been numbered and referred to committee. He stated that once Senate Bills are numbered and available on the legislature's website, Advisory Council staff will prepare summaries in preparation for discussion on the bills at a future meeting.

Meeting adjourned.

The next meeting of the Advisory Council is scheduled for Wednesday, May 13, 2015, at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.